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Attorneys for Defendants BENSON SECURITY
SYSTEMS, INC., SHAWN BENSON; ERIC
BENSON; AND CORY BENSON

IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF ARIZONA

Stoer Construction, Inc., a California
Corporation,

Plaintiff,

v.

Benson Security Systems, Inc., an Arizona

Case No. 2:22-cv-00400

**AMENDED ANSWER,
AFFIRMATIVE DEFENSES,
COUNTERCLAIMS, AND THIRD-
PARTY COMPLAINT OF
DEFENDANTS BENSON**

AMENDED ANSWER, AFFIRMATIVE
DEFENSES, COUNTERCLAIMS, AND THIRD-
PARTY COMPLAINT OF DEFENDANTS

Corporation; Shawn Benson, an individual;
Eric Benson, an individual; Cory Benson,
an individual; and Does 1 through 50,
inclusive,

Defendants.

**SECURITY SYSTEMS, INC.,
SHAWN BENSON, ERIC BENSON
AND CORY BENSON**

Benson Security Systems, Inc., an Arizona
Corporation; Shawn Benson, an individual;
Eric Benson, an individual; and Cory
Benson, an individual,

Third-Party Plaintiffs.

v.

Sean Anderson, an individual; Mike Ward,
an individual; and BC Holding, LLC, a
California Limited Liability Company,

Third-Party Defendants.

1 Defendants Benson Security Systems, Inc. (“**Benson**”), Shawn Benson, Eric
2 Benson, and Cory Benson (collectively with Benson, the “**Defendants**”), hereby file this
3 *Amended Answer, Affirmative Defenses and Counterclaims* (the “**Answer**”) to Plaintiff
4 *Stoer Construction, Inc.’s First Amended Complaint* [Docket No. 64] (“**First Amended**
5 **Complaint**”). The Defendants answer as follows:

6
7 **I. ANSWER**

8 1. In response to paragraph 1 of the First Amended Complaint, Defendants lack
9 the information to admit or deny the allegations contained therein. To the extent that an
10 answer to the allegations in this paragraph is required, Defendants are without knowledge
11 or information sufficient to form a belief as to the truth of these allegations and therefore
12 deny each and every allegation.

13 2. In response to paragraph 2 of the First Amended Complaint, Defendants
14 admit that Benson is a corporation organized and existing under the laws of the State of
15 Arizona, with a principal place of business at 2065 W. Obispo Avenue, Suite 101, Gilbert,
16 Arizona 85233. Defendants further admit that Benson is a contractor licensed under the
17 laws of the State of California, with California license number 795362. Defendants further
18 admit that Benson is, and at all times relevant has been, a 47.5% owner and member of
19 Benson Systems of Northern California, LLC (“**NorCal**”), a California limited liability
20 company with its principal address located at 2065 W. Obispo Avenue, Suite 101, Gilbert,
21 Arizona 85233. Defendants further admit that NorCal filed for Chapter 7 on bankruptcy in
22 the U.S. Bankruptcy Court for the District of Arizona on June 16, 2021. With regard to the
23 remainder of the allegations in paragraph 2 of the First Amended Complaint, Defendants
24 state that the allegations are legal conclusions and therefore an answer to those allegations
25 is neither necessary nor appropriate. To the extent that an answer to the allegations in this
26 paragraph is required, Defendants are without knowledge or information sufficient to form
27 a belief as to the truth of these allegations and therefore denies each and every remaining
28 allegation.

1 3. In response to paragraph 3 of the First Amended Complaint, Defendants
2 admit that Shawn Benson is an individual residing in the State of Arizona and is the
3 Founder and Chief Executive Officer of Benson. Defendants deny the remaining
4 allegations contained therein.

5 4. In response to paragraph 4 of the First Amended Complaint, Defendants
6 admit that Shawn Benson was responsible for top-level supervision, management, and
7 operations of NorCal. Defendants deny the remaining allegations contained therein.

8 5. In response to paragraph 5 of the First Amended Complaint, Defendants deny
9 that Eric Benson is the Chief Financial Officer of Benson. Defendants admit that Eric
10 Benson is an individual residing in the State of Arizona.

11 6. In response to paragraph 6 of the First Amended Complaint, Defendants
12 admit that Eric Benson was responsible for sales, accounting, and finances of NorCal.
13 Defendants deny the remaining allegations contained therein.

14 7. In response to paragraph 7 of the First Amended Complaint, Defendants
15 admit the allegations contained therein.

16 8. In response to paragraph 8 of the First Amended Complaint, Defendants
17 admit that Cory Benson was responsible for operations, including, but not limited to, field
18 operations, of NorCal. Defendants deny the remaining allegations contained therein.

19 9. In response to paragraph 9 of the First Amended Complaint, Defendants
20 respond that paragraph 9 does not contain any factual allegations to which a response is
21 required. To the extent paragraph 9 contains factual allegations to which a response is
22 required, Defendants are without knowledge or information sufficient to form a belief as
23 to the truth of these allegations and therefore deny each and every allegation.

24 10. In response to paragraph 10 of the First Amended Complaint, Defendants
25 state that the allegations are legal conclusions and therefore an answer to those allegations
26 is neither necessary nor appropriate. To the extent that an answer to the allegations in this
27 paragraph is required, Defendants deny each and every allegation.
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1 11. In response to paragraph 11 of the First Amended Complaint, to the extent
2 that the characterization of NorCal as Benson's "subsidiary" constitutes a legal conclusion,
3 no response to that legal conclusion is necessary or appropriate. To the extent an answer to
4 this allegation is required, Defendants deny this allegation. Defendants admit that at all
5 times relevant to the First Amended Complaint and this Answer, Benson owned 47.5% of
6 the membership interests in NorCal. BC Holding, LLC ("**BC Holding**") a company
7 affiliated with Stoer Construction, Inc. ("**Plaintiff**" or "**Stoer**"), also owned (and continues
8 to own) 45.5% of the membership interests in NorCal at all times relevant to the First
9 Amended Complaint and this Answer.

10 12. In response to paragraph 12 of the First Amended Complaint, Defendants
11 believe that the "allegations" contained therein are actually legal conclusions couched as
12 allegations; accordingly, no answer to those allegations is necessary or appropriate. To the
13 extent that an answer to the allegations in this paragraph is required, Defendants deny the
14 allegations contained therein.

15 13. In response to paragraph 13 of the First Amended Complaint, Defendants
16 believe that the "allegations" contained therein are actually legal conclusions couched as
17 allegations; accordingly, no answer to those allegations is necessary or appropriate. To the
18 extent that an answer to the allegations in this paragraph is required, Defendants deny the
19 allegations contained therein.

20 14. In response to paragraph 14 of the First Amended Complaint, Defendants
21 deny the allegations contained therein.

22 15. In response to paragraph 15 of the First Amended Complaint, Defendants
23 admit that Benson and NorCal currently share the same principal place of business located
24 at 2065 W. Obispo Avenue, Suite 101, Gilbert, Arizona 85233. Defendants deny that
25 location has been NorCal's principal place of business at all times relevant to the First
26 Amended Complaint and this Answer.
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1 16. In response to paragraph 16 of the First Amended Complaint, Defendants
2 deny the allegations contained therein.

3 17. In response to paragraph 17 of the First Amended Complaint, Defendants
4 deny the allegations contained therein.

5 18. In response to paragraph 18 of the First Amended Complaint, Defendants
6 deny the allegations contained therein.

7 19. In response to paragraph 19 of the First Amended Complaint, Defendants
8 deny the allegations contained therein.

9 20. In response to paragraph 20 of the First Amended Complaint, Defendants
10 deny the allegations contained therein.

11 21. In response to paragraph 21 of the First Amended Complaint, Defendants
12 admit that Benson possesses some of NorCal's books of account and records. To the extent
13 not admitted, Defendants deny the allegations in this paragraph.

14 22. In response to paragraph 22 of the First Amended Complaint, Defendants
15 deny the allegations contained therein.

16 23. In response to paragraph 23 of the First Amended Complaint, Defendants
17 believe that the "allegations" contained therein are actually legal conclusions couched as
18 allegations; accordingly, no answer to those allegations is necessary or appropriate. To the
19 extent that an answer to the allegations in this paragraph is required, Defendants deny the
20 allegations contained therein.

21 24. In response to paragraph 24 of the First Amended Complaint, Defendants
22 believe that the "allegations" contained therein are actually legal conclusions couched as
23 allegations; accordingly, no answer to those allegations is necessary or appropriate. To the
24 extent that an answer to the allegations in this paragraph is required, Defendants deny the
25 allegations contained therein.

26 25. In response to paragraph 25 of the First Amended Complaint, Defendants
27 believe that the "allegations" contained therein are actually legal conclusions couched as
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1 allegations; accordingly, no answer to those allegations is necessary or appropriate. To the
2 extent that an answer to the allegations in this paragraph is required, Defendants deny the
3 allegations contained therein.

4 26. In response to paragraph 26 of the First Amended Complaint, Defendants
5 believe that the “allegations” contained therein are actually legal conclusions couched as
6 allegations; accordingly, no answer to those allegations is necessary or appropriate. To the
7 extent that an answer to the allegations in this paragraph is required, Defendants deny the
8 allegations contained therein.

9 27. In response to paragraph 27 of the First Amended Complaint, Defendants
10 believe that the “allegations” contained therein are actually legal conclusions couched as
11 allegations; accordingly, no answer to those allegations is necessary or appropriate. To the
12 extent that an answer to the allegations in this paragraph is required, Defendants deny the
13 allegations contained therein.

14 28. In response to paragraph 28 of the First Amended Complaint, Defendants
15 admit the allegations contained therein.

16 29. In response to paragraph 29 of the First Amended Complaint, Defendants
17 admit upon information and belief that Stoer is a California-licensed general contractor that
18 performs general contracting services for various construction projects in California.

19 30. In response to paragraph 30 of the First Amended Complaint, Defendants
20 deny the allegations contained therein.

21 31. In response to paragraph 31 of the First Amended Complaint, Defendants
22 admit that in January 2018, Sean Anderson and Mike Ward traveled to Benson’s offices in
23 Gilbert, Arizona and met with certain Benson employees, including Shawn Benson, Eric
24 Benson, Cory Benson, and Phil Farber. The remainder of the allegations contained therein,
25 if any, are denied.

26 32. In response to paragraph 32 of the First Amended Complaint, Defendants
27 admit the allegations contained therein.
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1 33. In response to paragraph 33 of the First Amended Complaint, Defendants
2 lack the information to admit or deny the allegations contained therein. To the extent that
3 an answer to the allegations in this paragraph is required, Defendants are without
4 knowledge or information sufficient to form a belief as to the truth of these allegations and
5 therefore deny each and every allegation.

6 34. In response to paragraph 34 of the First Amended Complaint, Defendants
7 lack the information to admit or deny the allegations contained therein. To the extent that
8 an answer to the allegations in this paragraph is required, Defendants are without
9 knowledge or information sufficient to form a belief as to the truth of these allegations and
10 therefore deny each and every allegation.

11 35. In response to paragraph 35 of the First Amended Complaint, Defendants
12 admit that in or around February of 2018, Shawn Benson, Eric Benson, Cory Benson, and
13 Phil Farber were invited and traveled to San Jose, California and Stoer's office at 1800
14 Hamilton Avenue, Suite 130, San Jose, California 95125 and met with Sean Anderson and
15 Mike Ward. To the extent not admitted, Defendants lack the information to admit or deny
16 the allegations contained therein. To the extent that an answer to the remaining allegations
17 in this paragraph is required, Defendants are without knowledge or information sufficient
18 to form a belief as to the truth of these allegations and therefore deny each and every
19 allegation.
20

21 36. In response to paragraph 36 of the First Amended Complaint, Defendants
22 deny the allegations contained therein. Specifically, Defendants deny that Shawn Benson
23 first proposed the idea of creating a "Benson Northern California enterprise," to the extent
24 that "enterprise" ultimately became NorCal.

25 37. In response to paragraph 37 of the First Amended Complaint, Defendants
26 admit that NorCal was formed on or about July 1, 2018, when Benson, BC Holding, and
27 Phil Farber executed the LLC Operating Agreement for NorCal. Defendants further admit
28 that on July 18, 2018, the Articles of Organization for NorCal were filed with the Secretary

1 of State for the State of California. Defendants deny any and all other allegations contained
2 in this paragraph.

3 38. In response to paragraph 38 of the First Amended Complaint, Defendants
4 deny the allegations contained therein.

5 39. In response to paragraph 39 of the First Amended Complaint, Defendants
6 deny the allegations contained therein.

7 40. In response to paragraph 40 of the First Amended Complaint, Defendants
8 deny the allegations contained therein.

9 41. In response to paragraph 41 of the First Amended Complaint, Defendants
10 admit that, at all times relevant to the First Amended Complaint and this Answer, Benson
11 owned 47.5%; BC Holding owned 45.5%; and Phil Farber owned 7% of NorCal.
12 Defendants further admit that, upon information and belief, BC Holding is equally owned
13 by Sean Anderson and Mike Ward. To the extent not admitted, Defendants deny the
14 allegations contained in this paragraph.

15 42. In response to paragraph 42 of the First Amended Complaint, Defendants
16 deny the allegations contained therein.

17 43. In response to paragraph 43 of the First Amended Complaint, Defendants
18 lack the information to admit or deny the allegations contained therein. To the extent that
19 an answer to the allegations in this paragraph is required, Defendants are without
20 knowledge or information sufficient to form a belief as to the truth of these allegations and
21 therefore deny each and every allegation.

22 44. In response to paragraph 44 of the First Amended Complaint, Defendants
23 admit that Stoer entered into six written subcontracts with NorCal, which were
24 subsequently replaced. To the extent not admitted, Defendants deny the allegations
25 contained in this paragraph.

26
27 a. In response to paragraph 44a. of the First Amended Complaint,
28 Defendants admit the allegations contained therein.

1 b. In response to paragraph 44b. of the First Amended Complaint,
2 Defendants admit the allegations contained therein.

3 c. In response to paragraph 44c. of the First Amended Complaint,
4 Defendants admit the allegations contained therein.

5 d. In response to paragraph 44d. of the First Amended Complaint,
6 Defendants admit the allegations contained therein.

7 e. In response to paragraph 44e. of the First Amended Complaint,
8 Defendants admit the allegations contained therein.

9 f. In response to paragraph 44f. of the First Amended Complaint,
10 Defendants admit the allegations contained therein.

11 45. In response to paragraph 45 of the First Amended Complaint, Defendants
12 deny the allegations contained therein.

13 46. In response to paragraph 46 of the First Amended Complaint, Defendants
14 deny the allegations contained therein.

15 47. In response to paragraph 47 of the First Amended Complaint, Defendants
16 admit that the subcontracts contained California license number 795362. To the extent not
17 admitted, Defendants deny the allegations contained in this paragraph.

18 48. In response to paragraph 48 of the First Amended Complaint, Defendants
19 deny the allegations contained therein.

20 49. In response to paragraph 49 of the First Amended Complaint, Defendants
21 admit the allegations contained therein.

22 50. In response to paragraph 50 of the First Amended Complaint, Defendants
23 admit that California contractor license number 795362 belongs to Benson. To the extent
24 not admitted, Defendants deny the allegations contained in this paragraph.

25 51. In response to paragraph 51 of the First Amended Complaint, Defendants
26 lack the information to admit or deny the allegations that, “[i]f Benson Systems of Northern
27 California completed the six Subcontracts, it would have resulted in a minimum \$8,250,000
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1 payment from Stoer to Benson Systems of Northern California.” Therefore, this allegation
2 is denied. Defendants deny the remainder of the allegations contained in this paragraph.

3 52. In response to paragraph 52 of the First Amended Complaint, Defendants
4 lack the information to admit or deny the allegations contained therein. To the extent that
5 an answer to the allegations in this paragraph is required, Defendants are without
6 knowledge or information sufficient to form a belief as to the truth of these allegations and
7 therefore deny each and every allegation.

8 53. In response to paragraph 53 of the First Amended Complaint, Defendants
9 admit that the subcontracts contain a provision regarding scope and that the contracts speak
10 for themselves. To the extent not admitted, Defendants state that the allegations are legal
11 conclusions and therefore an answer to those allegations is neither necessary nor
12 appropriate. Therefore, to the extent not admitted, Defendants deny the allegations
13 contained in this paragraph.

14 54. In response to paragraph 54 of the First Amended Complaint, Defendants
15 admit that the subcontracts contain a provision regarding price and that the contracts speak
16 for themselves. To the extent not admitted, Defendants state that the allegations are legal
17 conclusions and therefore an answer to those allegations is neither necessary nor
18 appropriate. Therefore, to the extent not admitted, Defendants deny the allegations
19 contained in this paragraph.

20 55. In response to paragraph 55 of the First Amended Complaint, Defendants
21 admit that the subcontracts contain a provision regarding payment and that the contracts
22 speak for themselves. To the extent not admitted, Defendants state that the allegations are
23 legal conclusions and therefore an answer to those allegations is neither necessary nor
24 appropriate. Therefore, to the extent not admitted, Defendants deny the allegations
25 contained in this paragraph.

26 56. In response to paragraph 56 of the First Amended Complaint, Defendants
27 admit that the subcontracts contain a provision regarding time and that the contracts speak
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1 for themselves. To the extent not admitted, Defendants state that the allegations are legal
2 conclusions and therefore an answer to those allegations is neither necessary nor
3 appropriate. Therefore, to the extent not admitted, Defendants deny the allegations
4 contained in this paragraph.

5 57. In response to paragraph 57 of the First Amended Complaint, Defendants
6 admit that the subcontracts contain a provision regarding compliance and that the contracts
7 speak for themselves. To the extent not admitted, Defendants state that the allegations are
8 legal conclusions and therefore an answer to those allegations is neither necessary nor
9 appropriate. Therefore, to the extent not admitted, Defendants deny the allegations
10 contained in this paragraph.

11 58. In response to paragraph 58 of the First Amended Complaint, Defendants
12 admit that the subcontracts contain a provision regarding attorney's fees and that the
13 contracts speak for themselves. To the extent not admitted, Defendants state that the
14 allegations are legal conclusions and therefore an answer to those allegations is neither
15 necessary nor appropriate.

16 59. In response to paragraph 59 of the First Amended Complaint, Defendants
17 deny the allegations contained therein.

18 60. In response to paragraph 60 of the First Amended Complaint, Defendants
19 deny the allegations contained therein.

20 61. In response to paragraph 61 of the First Amended Complaint, Defendants
21 deny the allegations contained therein.

22 62. In response to paragraph 62 of the First Amended Complaint, Defendants
23 deny the allegations contained therein.

24 63. In response to paragraph 63 of the First Amended Complaint, Defendants
25 deny the allegations contained therein.

26 64. In response to paragraph 64 of the First Amended Complaint, Defendants
27 deny the allegations contained therein.
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1 65. In response to paragraph 65 of the First Amended Complaint, Defendants
2 lack the information to admit or deny the allegation that Stoer has reassigned the
3 Subcontracts (as defined in the First Amended Complaint). To the extent that an answer to
4 this allegation is required, Defendants are without knowledge or information sufficient to
5 form a belief as to the truth of these allegations and therefore deny this allegation.
6 Defendants deny the remainder of the allegations contained in this paragraph.

7 66. In response to paragraph 66 of the First Amended Complaint, Defendants
8 deny the allegations contained therein.

9 67. In response to paragraph 67 of the First Amended Complaint, Defendants
10 deny the allegations contained therein.

11 68. In response to paragraph 68 of the First Amended Complaint, Defendants
12 deny the allegations contained therein.

13 69. In response to paragraph 69 of the First Amended Complaint, Defendants
14 deny the allegations contained therein.

15 70. In response to paragraph 70 of the First Amended Complaint, Defendants
16 deny the allegations contained therein.

17 71. In response to paragraph 71 of the First Amended Complaint, Defendants
18 deny the allegations contained therein.

19 72. In response to paragraph 72 of the First Amended Complaint, Defendants
20 lack the information to admit or deny the allegations contained therein. To the extent that
21 an answer to the allegations in this paragraph is required, Defendants are without
22 knowledge or information sufficient to form a belief as to the truth of these allegations and
23 therefore deny each and every allegation.

24 73. In response to paragraph 73 of the First Amended Complaint, Defendants
25 deny the allegations contained therein.

26 74. In response to paragraph 74 of the First Amended Complaint, Defendants
27 lack the information to admit or deny the allegations contained therein. To the extent that
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1 an answer to the allegations in this paragraph is required, Defendants are without
2 knowledge or information sufficient to form a belief as to the truth of these allegations and
3 therefore deny each and every allegation.

4 75. In response to paragraph 75 of the First Amended Complaint, Defendants
5 deny the allegations contained therein.

6 76. In response to paragraph 76 of the First Amended Complaint, Defendants
7 admit that the Subcontracts (as defined in the First Amended Complaint) contain provisions
8 for progress payments and that the contracts speak for themselves. To the extent not
9 admitted, Defendants deny the allegations contained in this paragraph.

10 77. In response to paragraph 77 of the First Amended Complaint, Defendants
11 admit the allegations contained therein.

12 78. In response to paragraph 78 of the First Amended Complaint, Defendants
13 admit the allegations contained therein.

14 79. In response to paragraph 79 of the First Amended Complaint, Defendants
15 admit that Stoer demanded \$6,267,710.99 from NorCal. With regard to the remainder of
16 the allegations in this paragraph, Defendants lack the information to admit or deny the
17 allegations contained therein. To the extent that an answer to the allegations in this
18 paragraph is required, Defendants are without knowledge or information sufficient to form
19 a belief as to the truth of these allegations and therefore deny each and every allegation.

20 80. In response to paragraph 80 of the First Amended Complaint, Defendants
21 admit that NorCal filed a voluntary petition for relief under chapter 7 of Title 11 of the
22 United States Code on June 16, 2021, which gave rise to Case No. 21-04680 in the
23 Bankruptcy Court for the District of Arizona. To the extent not admitted, Defendants deny
24 the allegations in this paragraph.
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FIRST CAUSE OF ACTION

(Recovery of Payments to Unlicensed Contractor Pursuant to California Business and Professions Code §7031(b) – Against All Defendants)

81. In response to paragraph 81 of the First Amended Complaint, Defendants adopt by reference all of the responses set forth above.

82. In response to paragraph 82 of the First Amended Complaint, Defendants admit that Stoer entered into six written subcontracts with NorCal, which were subsequently replaced.

a. In response to paragraph 82 of the First Amended Complaint, Defendants admit the allegations contained therein.

b. In response to paragraph 82 of the First Amended Complaint, Defendants admit the allegations contained therein.

c. In response to paragraph 82 of the First Amended Complaint, Defendants admit the allegations contained therein.

d. In response to paragraph 82 of the First Amended Complaint, Defendants admit the allegations contained therein.

e. In response to paragraph 82 of the First Amended Complaint, Defendants admit the allegations contained therein.

f. In response to paragraph 82 of the First Amended Complaint, Defendants admit the allegations contained therein.

83. In response to paragraph 83 of the First Amended Complaint, Defendants deny the allegations contained therein.

84. In response to paragraph 84 of the First Amended Complaint, Defendants state that the allegations are legal conclusions and therefore an answer to those allegations is neither necessary nor appropriate. To the extent that an answer to the allegations in this paragraph is required, Defendants deny the allegations contained therein.

1 85. In response to paragraph 85 of the First Amended Complaint, Defendants
2 deny the allegations contained therein.

3 86. In response to paragraph 86 of the First Amended Complaint, Defendants
4 deny the allegations contained therein.

5 87. In response to paragraph 87 of the First Amended Complaint, Defendants
6 deny the allegations contained therein.

7 88. In response to paragraph 88 of the First Amended Complaint, Defendants
8 state that the allegations are legal conclusions and therefore an answer to those allegations
9 is neither necessary nor appropriate. To the extent that an answer to the allegations in this
10 paragraph is required, Defendants deny the allegations contained therein.

11 **SECOND CAUSE OF ACTION**

12 **(Intentional Misrepresentation – Against All Defendants)**

13 89. In response to paragraph 89 of the First Amended Complaint, Defendants
14 adopt by reference all of the responses set forth above.

15 90. In response to paragraph 90 of the First Amended Complaint, Defendants
16 lack the information to admit or deny the allegations contained therein. To the extent that
17 an answer to the allegations in this paragraph is required, Defendants are without
18 knowledge or information sufficient to form a belief as to the truth of these allegations and
19 therefore deny each and every allegation.

20 91. In response to paragraph 91 of the First Amended Complaint, Defendants
21 deny the allegations contained therein.

22 92. In response to paragraph 92 of the First Amended Complaint, Defendants
23 admit that Stoer and Benson negotiated regarding the Subcontracts (as defined in the First
24 Amended Complaint). To the extent not admitted, Defendants deny the allegations in this
25 paragraph.
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1 93. In response to paragraph 93 of the First Amended Complaint, Defendants
2 admit that the subcontracts contained California contractor's license number 795362. To
3 the extent not admitted, Defendants deny the allegations in this paragraph.

4 94. In response to paragraph 94 of the First Amended Complaint, Defendants
5 admit that California contractor's license number 795362 belongs to Benson. To the extent
6 not admitted, Defendants deny the allegations in this paragraph.

7 95. In response to paragraph 95 of the First Amended Complaint, Defendants
8 deny the allegations contained therein.

9 96. In response to paragraph 96 of the First Amended Complaint, Defendants
10 deny the allegations contained therein.

11 97. In response to paragraph 97 of the First Amended Complaint, Defendants
12 lack the information to admit or deny the allegations contained therein. To the extent that
13 an answer to the allegations in this paragraph is required, Defendants are without
14 knowledge or information sufficient to form a belief as to the truth of these allegations and
15 therefore deny each and every allegation.

16 98. In response to paragraph 98 of the First Amended Complaint, Defendants
17 deny the allegations contained therein.

18 99. In response to paragraph 99 of the First Amended Complaint, Defendants
19 deny the allegations contained therein.

20 100. In response to paragraph 100 of the First Amended Complaint, Defendants
21 deny the allegations contained therein.

22 101. In response to paragraph 101 of the First Amended Complaint, Defendants
23 lack the information to admit or deny the allegations contained therein. To the extent that
24 an answer to the allegations in this paragraph is required, Defendants are without
25 knowledge or information sufficient to form a belief as to the truth of these allegations and
26 therefore deny each and every allegation.
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1 102. In response to paragraph 102 of the First Amended Complaint, Defendants
2 deny the allegations contained therein.

3 103. In response to paragraph 103 of the First Amended Complaint, Defendants
4 deny the allegations contained therein.

5 104. In response to paragraph 104 of the First Amended Complaint, Defendants
6 deny the allegations contained therein.

7 105. In response to paragraph 105 of the First Amended Complaint, Defendants
8 deny the allegations contained therein.

9 106. In response to paragraph 106 of the First Amended Complaint, Defendants
10 deny the allegations contained therein.

11 107. In response to paragraph 107 of the First Amended Complaint, Defendants
12 deny the allegations contained therein.

13 108. In response to paragraph 108 of the First Amended Complaint, Defendants
14 deny the allegations contained therein.

15 109. In response to paragraph 109 of the First Amended Complaint, Defendants
16 deny the allegations contained therein.
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18 **THIRD CAUSE OF ACTION**

19 **(Negligent Misrepresentation – Against All Defendants)**

20 110. In response to paragraph 110 of the First Amended Complaint, Defendants
21 adopt by reference all of the responses set forth above.

22 111. In response to paragraph 111 of the First Amended Complaint, Defendants
23 lack the information to admit or deny the allegations contained therein. To the extent that
24 an answer to the allegations in this paragraph is required, Defendants are without
25 knowledge or information sufficient to form a belief as to the truth of these allegations and
26 therefore deny each and every allegation.
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1 112. In response to paragraph 112 of the First Amended Complaint, Defendants
2 deny the allegations contained therein.

3 113. In response to paragraph 113 of the First Amended Complaint, Defendants
4 deny the allegations contained therein.

5 114. In response to paragraph 114 of the First Amended Complaint, Defendants
6 deny the allegations contained therein.

7 115. In response to paragraph 115 of the First Amended Complaint, Defendants
8 admit that the subcontracts contained California license number 795362. To the extent not
9 admitted, Defendants deny the allegations contained in this paragraph.

10 116. In response to paragraph 116 of the First Amended Complaint, Defendants
11 deny the allegations contained therein.

12 117. In response to paragraph 117 of the First Amended Complaint, Defendants
13 deny the allegations contained therein.

14 118. In response to paragraph 118 of the First Amended Complaint, Defendants
15 admit that Stoer executed the six written subcontracts with NorCal, which were
16 subsequently replaced. To the extent not admitted, Defendants deny the allegations
17 contained in this paragraph.

18 119. In response to paragraph 119 of the First Amended Complaint, Defendants
19 deny the allegations contained therein.

20 120. In response to paragraph 120 of the First Amended Complaint, Defendants
21 deny the allegations contained therein.

22 121. In response to paragraph 121 of the First Amended Complaint, Defendants
23 deny the allegations contained therein.

24 122. In response to paragraph 122 of the First Amended Complaint, Defendants
25 deny the allegations contained therein.

26 123. In response to paragraph 123 of the First Amended Complaint, Defendants
27 deny the allegations contained therein.
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1 134. In response to paragraph 134 of the First Amended Complaint, Defendants
2 deny the allegations contained therein.

3 135. In response to paragraph 135 of the First Amended Complaint, Defendants
4 deny the allegations contained therein.

5 136. In response to paragraph 136 of the First Amended Complaint, Defendants
6 deny the allegations contained therein.

7 137. In response to paragraph 137 of the First Amended Complaint, Defendants
8 deny the allegations contained therein.

9 138. In response to paragraph 138 of the First Amended Complaint, Defendants
10 admit that Stoer and NorCal entered into a written subcontract for HVAC work, which was
11 subsequently replaced, and the contract speaks for itself. To the extent not admitted,
12 Defendants deny the allegations contained in this paragraph.

13 139. In response to paragraph 139 of the First Amended Complaint, Defendants
14 admit that Stoer and NorCal entered into a written subcontract for HVAC work, which was
15 subsequently replaced, and the contract speaks for itself. To the extent not admitted,
16 Defendants deny the allegations contained in this paragraph.

17 140. In response to paragraph 140 of the First Amended Complaint, Defendants
18 deny the allegations contained therein.

19 141. In response to paragraph 141 of the First Amended Complaint, Defendants
20 deny the allegations contained therein.

21 142. In response to paragraph 142 of the First Amended Complaint, Defendants
22 deny the allegations contained therein.

23 143. In response to paragraph 143 of the First Amended Complaint, Defendants
24 deny the allegations contained therein.

25 144. In response to paragraph 144 of the First Amended Complaint, Defendants
26 admit that Stoer and NorCal entered into a written subcontract for fire sprinkler installation
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1 work, which was subsequently replaced, and the contract speaks for itself. To the extent
2 not admitted, Defendants deny the allegations contained in this paragraph.

3 145. In response to paragraph 145 of the First Amended Complaint, Defendants
4 admit that Stoer and NorCal entered into a written subcontract for fire sprinkler installation
5 work, which was subsequently replaced, and the contract speaks for itself. To the extent
6 not admitted, Defendants deny the allegations contained in this paragraph.

7 146. In response to paragraph 146 of the First Amended Complaint, Defendants
8 deny the allegations contained therein.

9 147. In response to paragraph 147 of the First Amended Complaint, Defendants
10 deny the allegations contained therein.

11 148. In response to paragraph 148 of the First Amended Complaint, Defendants
12 deny the allegations contained therein.

13 149. In response to paragraph 149 of the First Amended Complaint, Defendants
14 deny the allegations contained therein.

15 150. In response to paragraph 150 of the First Amended Complaint, Defendants
16 admit that Stoer and NorCal entered into a written subcontract for fire alarm installation
17 work, which was subsequently replaced, and the contract speaks for itself. To the extent
18 not admitted, Defendants deny the allegations contained in this paragraph.

19 151. In response to paragraph 151 of the First Amended Complaint, Defendants
20 admit that Stoer and NorCal entered into a written subcontract for fire alarm installation
21 work, which was subsequently replaced, and the contract speaks for itself. To the extent
22 not admitted, Defendants deny the allegations contained in this paragraph.

23 152. In response to paragraph 152 of the First Amended Complaint, Defendants
24 deny the allegations contained therein.

25 153. In response to paragraph 153 of the First Amended Complaint, Defendants
26 deny the allegations contained therein.
27
28

1 154. In response to paragraph 154 of the First Amended Complaint, Defendants
2 deny the allegations contained therein.

3 155. In response to paragraph 155 of the First Amended Complaint, Defendants
4 deny the allegations contained therein.

5 156. In response to paragraph 156 of the First Amended Complaint, Defendants
6 admit that Stoer and NorCal entered into a written subcontract for the installation of low
7 voltage/data communication equipment, which was subsequently replaced, and the
8 contract speaks for itself. To the extent not admitted, Defendants deny the allegations
9 contained in this paragraph.

10 157. In response to paragraph 157 of the First Amended Complaint, Defendants
11 admit that Stoer and NorCal entered into a written subcontract for the installation of low
12 voltage/data communication equipment, which was subsequently replaced, and the
13 contract speaks for itself. To the extent not admitted, Defendants deny the allegations
14 contained in this paragraph.

15 158. In response to paragraph 158 of the First Amended Complaint, Defendants
16 deny the allegations contained therein.

17 159. In response to paragraph 159 of the First Amended Complaint, Defendants
18 deny the allegations contained therein.

19 160. In response to paragraph 160 of the First Amended Complaint, Defendants
20 deny the allegations contained therein.

21 161. In response to paragraph 161 of the First Amended Complaint, Defendants
22 deny the allegations contained therein.

23 162. In response to paragraph 162 of the First Amended Complaint, Defendants
24 admit that Stoer and NorCal entered into a written subcontract for electrical work, which
25 was subsequently replaced, and the contract speaks for itself. To the extent not admitted,
26 Defendants deny the allegations contained in this paragraph.
27
28

1 163. In response to paragraph 163 of the First Amended Complaint, Defendants
2 admit that Stoer and NorCal entered into a written subcontract for electrical work, which
3 was subsequently replaced, and the contract speaks for itself. To the extent not admitted,
4 Defendants deny the allegations contained in this paragraph.

5 164. In response to paragraph 164 of the First Amended Complaint, Defendants
6 deny the allegations contained therein.

7 165. In response to paragraph 165 of the First Amended Complaint, Defendants
8 deny the allegations contained therein.

9 166. In response to paragraph 166 of the First Amended Complaint, Defendants
10 deny the allegations contained therein.

11 167. In response to paragraph 167 of the First Amended Complaint, Defendants
12 deny the allegations contained therein.

13 168. In response to paragraph 168 of the First Amended Complaint, Defendants
14 state that the allegations are legal conclusions and therefore an answer to those allegations
15 is neither necessary nor appropriate. To the extent that an answer to the allegations in this
16 paragraph is required, Defendants deny the allegations contained therein.

17
18 **FIFTH CAUSE OF ACTION**

19 **(Negligence – Against All Defendants)**

20 169. In response to paragraph 169 of the First Amended Complaint, Defendants
21 adopt by reference all of the responses set forth above.

22 170. In response to paragraph 170 of the First Amended Complaint, Defendants
23 state that the allegations are legal conclusions and therefore an answer to those allegations
24 is neither necessary nor appropriate. To the extent that an answer to the allegations in this
25 paragraph is required, Defendants are without knowledge or information sufficient to form
26 a belief as to the truth of these allegations and therefore denies each and every allegation.
27
28

1 171. In response to paragraph 171 of the First Amended Complaint, Defendants
2 deny the allegations contained therein.

3 172. In response to paragraph 172 of the First Amended Complaint, Defendants
4 deny the allegations contained therein.

5 173. In response to paragraph 173 of the First Amended Complaint, Defendants
6 deny the allegations contained therein.

7 **SIXTH CAUSE OF ACTION**

8 **(Violation of California Business and Professions Code § 17200 – Against All**
9 **Defendants)**

10 174. In response to paragraph 174 of the First Amended Complaint, Defendants
11 adopt by reference all of the responses set forth above.

12 175. In response to paragraph 175 of the First Amended Complaint, Defendants
13 deny the allegations contained therein.

14 176. In response to paragraph 176 of the First Amended Complaint, Defendants
15 deny the allegations contained therein.

16 177. In response to paragraph 177 of the First Amended Complaint, Defendants
17 deny the allegations contained therein.

18 **SEVENTH CAUSE OF ACTION**

19 **(Breach of the Covenant of Good Faith and Fair Dealing – Against All Defendants)**

20 178. In response to paragraph 178 of the First Amended Complaint, Defendants
21 adopt by reference all of the responses set forth above.

22 179. In response to paragraph 179 of the First Amended Complaint, Defendants
23 deny the allegations contained therein.

24 180. In response to paragraph 180 of the First Amended Complaint, Defendants
25 deny the allegations contained therein.

26 181. In response to paragraph 181 of the First Amended Complaint, Defendants
27 deny the allegations contained therein.
28

1 182. In response to paragraph 182 of the First Amended Complaint, Defendants
2 deny the allegations contained therein.

3 183. In response to paragraph 183 of the First Amended Complaint, Defendants
4 deny the allegations contained therein.

5 184. In response to paragraph 184 of the First Amended Complaint, Defendants
6 state that the allegations are legal conclusions and therefore an answer to those allegations
7 is neither necessary nor appropriate. To the extent that an answer to the allegations in this
8 paragraph is required, Defendants are without knowledge or information sufficient to form
9 a belief as to the truth of these allegations and therefore denies each and every allegation.

10 185. In response to paragraph 185 of the First Amended Complaint, Defendants
11 deny the allegations contained therein.

12 186. In response to paragraph 186 of the First Amended Complaint, Defendants
13 deny the allegations contained therein.

14 **EIGHTH CAUSE OF ACTION**

15 **(Intentional Interference with Contractual Relations – Against All Defendants)**

16 187. In response to paragraph 187 of the First Amended Complaint, Defendants
17 adopt by reference all of the responses set forth above.

18 188. In response to paragraph 188 of the First Amended Complaint, Defendants
19 lack the information to admit or deny the allegations contained therein. To the extent that
20 an answer to the allegations in this paragraph is required, Defendants are without
21 knowledge or information sufficient to form a belief as to the truth of these allegations and
22 therefore deny each and every allegation.

23 189. In response to paragraph 189 of the First Amended Complaint, Defendants
24 deny the allegations contained therein.

25 190. In response to paragraph 190 of the First Amended Complaint, Defendants
26 deny the allegations contained therein.
27
28

200. In response to paragraph 200 of the First Amended Complaint, Defendants deny the allegations contained therein.

201. In response to paragraph 201 of the First Amended Complaint, Defendants deny the allegations contained therein.

TENTH CAUSE OF ACTION

(Negligent Interference with Prospective Economic Relations – Against All Defendants)

202. In response to paragraph 202 of the First Amended Complaint, Defendants adopt by reference all of the responses set forth above.

203. In response to paragraph 203 of the First Amended Complaint, Defendants lack the information to admit or deny the allegations contained therein. To the extent that an answer to the allegations in this paragraph is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore deny each and every allegation.

204. In response to paragraph 204 of the First Amended Complaint, Defendants deny the allegations contained therein.

205. In response to paragraph 205 of the First Amended Complaint, Defendants deny the allegations contained therein.

206. In response to paragraph 206 of the First Amended Complaint, Defendants deny the allegations contained therein.

207. In response to paragraph 207 of the First Amended Complaint, Defendants deny the allegations contained therein.

208. In response to paragraph 208 of the First Amended Complaint, Defendants deny the allegations contained therein.

209. In response to paragraph 209 of the First Amended Complaint, Defendants deny the allegations contained therein.

PRAYER FOR RELIEF

210. Defendants deny that Plaintiff is entitled to any relief, including the relief sought in subsections (1)-(8) of its Prayer for Relief.

II. AFFIRMATIVE DEFENSES

211. Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendants set forth the following defenses, reserving the right to amend this Answer and/or add additional defenses as allowed by law. Each of the following defenses is stated as a separate and distinct defense, in the alternative to, and without waiving, any of the other defenses which are in this Answer or which may be pleaded later:

212. Plaintiff's claims are barred, in whole or in part, because Plaintiff has not sustained any injury or damage by reason of any act or omission of Defendants.

213. Plaintiff's claims are barred, in whole or in part, by the doctrine of novation.

214. Plaintiff's claims are barred, in whole or in part, by the doctrine of rescission.

215. Plaintiff's claims are barred, in whole or in part, due to Plaintiff's anticipatory breach of the contracts upon which Plaintiff bases its claims.

216. Plaintiff's claims are barred, in whole or in part, due to Plaintiff's own breach of and/or failure to perform under the contracts upon which Plaintiff bases its claims.

217. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, consent, estoppel, laches, and/or unclean hands.

218. Plaintiff's claims are barred, in whole or in part, by the doctrine of contributory negligence.

219. Plaintiff's claims are barred, in whole or in part, by the doctrine of assumption of risk.

220. Plaintiff's claims are barred, in whole or in part, due to Plaintiff's fraud and/or fraud in the inducement.

221. Plaintiff's claims are barred, in whole or in part, due to Plaintiff's failure to join Benson Systems of Northern California, LLC, as an indispensable party to this action pursuant to Federal Rule of Civil Procedure 19.

222. Plaintiff's claims are barred, in whole or in part, because Defendants are not a party to the contracts upon which Plaintiff bases its claims.

223. Plaintiff's claims are barred, in whole or in part, because Plaintiff lacks standing to bring this suit, as its claims belong to Benson Systems of Northern California, LLC (or the bankruptcy estate thereof).

224. Plaintiff's claims are barred, in whole or in part, because assuming, *arguendo*, that any contractual duties exist between Plaintiff and Defendants, Defendants performed all duties owed other than any duties which were prevented or excused.

225. Plaintiff's claims are barred, in whole or in part, due to Plaintiff's failure to mitigate its alleged damages.

226. Plaintiff's claims are barred, in whole or in part, by the doctrine of equitable estoppel.

III. COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

227. Defendants assert the following counterclaims against Stoer and assert the following third-party claims against the third-party defendants Anderson, Ward, and BC Holding pursuant to Federal Rules of Civil Procedure 13 and 14. The counterclaims and third-party complaint are collectively referred to as the "**Counter Complaint.**"

(Parties)

228. Plaintiff/counter-defendant Stoer is a California corporation that maintains its principal place of business at 1800 Hamilton Avenue, Suite 230, San Jose, California 95125. Stoer has already appeared herein.

229. Defendant/counter-plaintiff/third-party plaintiff Benson is an Arizona corporation with its principal place of business at 2065 W. Obispo Avenue, Suite 101, Gilbert, Arizona 85233.

1 230. Defendant/counter-plaintiff/third-party plaintiff Shawn Benson is an
2 individual residing in the state of Arizona.

3 231. Defendant/counter-plaintiff/third-party plaintiff Eric Benson is an individual
4 residing in the state of Arizona.

5 232. Defendant/counter-plaintiff/third-party plaintiff Cory Benson is an
6 individual residing in the state of Arizona.

7 233. Third-party defendant Sean Anderson (“**Anderson**”) is an individual
8 residing in the state of California. Anderson can be served at his place of business, 1800
9 Hamilton Avenue, Suite 230, San Jose, California 95125, or wherever he may be found.

10 234. Third-party defendant Mike Ward (“**Ward**”) is an individual residing in the
11 state of California. Ward can be served at his place of business, 1800 Hamilton Avenue,
12 Suite 230, San Jose, California 95125, or wherever he may be found.

13 235. Third-party defendant BC Holding is a California limited liability company
14 with its principal place of business at 1800 Hamilton Avenue, Suite 230, San Jose,
15 California 95125. BC Holding can be served with process via its registered agent,
16 Anderson, at 1800 Hamilton Avenue, Suite 230, San Jose, California 95125, or wherever
17 he may be found. BC Holding is owned by third-party defendants Anderson and Ward.

18 *Alter Ego*

19
20 236. Defendants are informed, believe, and allege that BC Holding never had, and
21 does not now have, a genuine and separate corporate existence apart from Stoer, Anderson,
22 and Ward.

23 237. Defendants are informed, believe, and allege that BC Holding and Stoer,
24 Anderson, and Ward acted as a single enterprise with a unity of interest, common business
25 purpose, and unity of ownership such that the separate personalities of BC Holding, Stoer,
26 Anderson, and Ward are merged, indistinguishable, and do not exist.

27 238. Defendants are informed, believe, and allege that Anderson and Ward, the
28 principals of Stoer, are, and at all times herein were, the majority owners of BC Holding.

1 239. Defendants are informed, believe, and allege that Stoer and BC Holding
2 share the same principal offices, located at 1800 Hamilton Avenue, Suite 230, San Jose,
3 California 95125.

4 240. Defendants are informed, believe, and allege that at all times relevant Stoer
5 and BC Holding shared the same directors, officers, and/or principals responsible for
6 supervision and management of the respective entities, including Anderson and Ward.

7 241. Defendants are informed, believe, and allege that at all times relevant Stoer
8 and BC Holding employed the same employees, including Anderson and Ward.

9 242. Defendants are informed, believe, and allege that at all times relevant BC
10 Holding shared the management and services of Stoer, including, but not limited to, legal,
11 human resources, payroll, accounting, collections, administration, procurement of labor,
12 employment, and equipment and use of Stoer's property and infrastructure.

13 243. Defendants are informed, believe, and allege that at all times relevant Stoer,
14 Anderson, and Ward, by virtue of Stoer's principals, Anderson and Ward's ownership of
15 BC Holding, were responsible for the day-to-day management and operations of BC
16 Holding, including, but not limited to, approval of all contracts and bill payments.

17 244. Defendants are informed, believe, and allege that at all times relevant Stoer,
18 Anderson, and Ward caused BC Holding to fail to observe corporate formalities, including
19 board meetings, maintenance of minutes, and/or adequate corporate records.

20 245. Defendants are informed, believe, and allege that at all times relevant Stoer,
21 Anderson, Ward, and BC Holding commingled funds and other assets and failed to
22 segregate funds thereof.

23 246. Defendants are informed, believe, and allege that if the conduct and acts of
24 BC Holding are treated as those of BC Holding alone, an inequitable result will follow and
25 will result in fraud and/or injustice to Defendants. Defendants are informed, believe, and
26 allege that at all times relevant BC Holding was a shell company through which Stoer,
27 Anderson, and Ward fraudulently conducted business in California. Defendants are
28

1 informed, believe, and allege that BC Holding has in fact been used and exists for the sole
2 purpose of enabling Stoer, Anderson, and Ward to wrongfully transact a portion of their
3 business under an alternate corporate guise and as a conduit for a single venture.

4 247. Defendants are informed, believe, and allege that BC Holding is inadequately
5 capitalized and/or undercapitalized such that BC Holding would be unable to pay monies
6 due and owing to Defendants for the acts and misconduct alleged herein.

7 248. Defendants are informed, believe, and allege that any funds or other assets
8 of BC Holding have been diverted to Stoer, Anderson, and/or Ward.

9 249. Defendants are informed, believe, and allege that Stoer, Anderson, and Ward
10 used BC Holding as a subterfuge of illegal and/or fraudulent transactions, including
11 subcontracting with themselves (thereby double or even triple dipping, unbeknownst to
12 parties with whom they prime contracted) and endeavoring to convince parties to do work
13 on their projects only to later refuse to pay for said work, which has caused, and continues
14 to cause, Defendants millions of dollars in damages—as described herein.

15 250. Stoer, Anderson, and Ward, as the principals and alter egos of BC Holding,
16 have been and are conducting, managing, and controlling the affairs of BC Holding. Stoer,
17 Anderson, and Ward have used the separate corporate identity of BC Holding as a shell
18 company for their own unjust and fraudulent enrichment, all while attempting to shield
19 themselves from prospective liability. Recognizing the privilege of separate existence
20 between BC Holding and Stoer, Anderson, and Ward would promote injustice, as Stoer,
21 Anderson, and Ward organized and controlled BC Holding such that it is now, and at all
22 relevant times was, merely an instrumentality, agency, joint venture, conduit, or adjunct of
23 Stoer, Anderson, and Ward, and Stoer, Anderson, and Ward in bad faith, dominated and
24 controlled BC Holding as set forth below.

25
26 **(Facts)**

27 251. From approximately 2010 until the present day, Benson operated – pursuant
28 to a valid California contractor’s license – through a branch office located near San Diego,

1 California. As such, Benson has provided in California, as a subcontractor, certain vital
 2 facility services, including electrical, mechanical, plumbing, information technology,
 3 security and access, and fire-life safety services. Prior to 2017, most of Benson's
 4 subcontractor services were located in southern California, because of its San Diego
 5 branch. Nevertheless, as detailed herein, Benson itself:

- 6 • Performed all of the work at issue in this lawsuit.
- 7 • With only a few exceptions, was paid with checks issued to Benson for that
 8 work.

9 Plaintiff's allegations of "unlicensed" subcontractor performing work in California have
 10 been manufactured out of nearly wholecloth. Accordingly, Plaintiff's lawsuit at its very
 11 core is grounded in years of subterfuge, fraud, deception, and manipulation by Stoer,
 12 Anderson, and Ward to get millions of dollars worth of work by Benson for nothing.

13 252. This subterfuge appears to have begun in or around December 2017, when
 14 Benson and Stoer, through its two principals, Anderson and Ward, were introduced to each
 15 other through a mutual business contact that requested Benson to get involved in a project
 16 where Stoer was construction manager. Thereafter, Stoer, Anderson, and Ward began
 17 meeting with Benson and suggesting ways for Benson to expand its presence in northern
 18 California, where Stoer operated as a general contractor.

19 253. On or about January 24, 2018, Anderson and Ward invited Shawn Benson
 20 and Phil Farber to dinner at Fleming's Prime Steakhouse & Wine Bar in San Jose,
 21 California. Shawn Benson and Phil Farber attended that dinner.

22 254. On or about February 1, 2018, Anderson and Ward, on behalf of Stoer,
 23 traveled to Benson's offices in Arizona, to (purportedly) explore a more definitive potential
 24 business relationship between Benson and Stoer. At that time, Benson viewed the
 25 relationship as an opportunity to expand its existing business into northern California—
 26 Stoer could bring Benson in to serve as a subcontractor on projects where Stoer was general
 27 contractor.

1 contractor. That ongoing relationship with Stoer constituted business development and an
2 opportunity to obtain help marketing Benson in northern California.

3 255. On or about February 15, 2018, Shawn Benson, Eric Benson, Cory Benson,
4 and Phil Farber, on behalf of Benson, were invited to Stoer's offices in San Jose, California,
5 to continue discussing the relationship between the two companies. At this point, Ward and
6 Anderson expressed only a potential desire to work directly with Benson, which was
7 licensed in California (and had been for many years).

8 The NorCal Ruse

9 256. Years later, the documents, facts, and even an admission by Third-Party
10 Defendants, establish a carefully planned and executed ruse to take advantage of Benson
11 in every way possible. That ruse includes lies, deception, and manipulated documents
12 and *.pdfs, as set forth herein. This litigation is simply the intended "gotcha" at the end of
13 the ruse that began on January 24, 2018 at a now-infamous dinner at Flemings during which
14 Anderson and Ward pitched a proposal to Benson that instead of subcontracting directly
15 with Benson, the parties would create what was effectively a joint venture—a new
16 California entity that would be owned jointly by Benson and another new entity that
17 Anderson and Ward intended to create. The idea Ward and Anderson proposed behind this
18 joint venture (the "NorCal Plan"), which ultimately would be NorCal, was that the new
19 California entity would bid for subcontractor work on projects where Stoer served as
20 general contractor; however, the new California entity would not be a direct subsidiary of
21 Stoer.
22

23 257. The potential benefits to Stoer were obvious. Stoer, Anderson, and Ward
24 knew they would be able to take advantage of Benson's considerable resources and
25 capabilities to actually perform work that Stoer itself did not have, while also ensuring that
26 NorCal successfully bid for (and was awarded) lucrative contracts on Stoer's projects. With
27 ownership interests in both the general contractor (Stoer) and subcontractor (NorCal),
28

1 Anderson and Ward positioned themselves to make money at two different levels of the
2 same project.

3 258. To the owners of Benson, Anderson and Ward appeared to offer a reputable
4 general contractor in Stoer that would allow Benson to get opportunities on projects in
5 Northern California that it might not have otherwise. While ceding part of the profits of
6 NorCal to Anderson and Ward (through their newly created entity owning part of NorCal)
7 was not ideal, giving up a percentage of *something* was preferable to getting one-hundred
8 percent of *nothing* (from not getting the jobs in the first place). Recognizing that this might
9 have been Benson's only opportunity to guarantee the relationship with Stoer, Benson
10 agreed to the NorCal Plan.

11 259. On or about March 21, 2018, Anderson, Ward, and Stoer took the first step
12 in furtherance of the NorCal Plan, filing Articles of Organization for BC Holding with the
13 Secretary of State for California.

14 260. Two days later, on or about March 23, 2018, Anderson and Ward, the
15 principals of Stoer, executed the Operating Agreement for BC Holding¹. Upon information
16 and belief, the only purpose for the existence of BC Holding was to participate in the
17 ownership of (what would become) NorCal.

18 261. The NorCal Plan was a fraud. As detailed herein, Anderson and Ward never
19 intended that BC Holdings would follow through on their promises to fund or support
20 NorCal as a real venture.

21 The Element Project

22 262. The first opportunity to put Stoer, Anderson, and Ward's NorCal Plan into
23 practice came in the form of a northern California hotel construction project called
24 "Element," owned by a company called LD Milpitas Property, LLC ("Owner"). Upon
25

26
27 ¹ A true and correct copy of the NorCal Operating Agreement is attached hereto as **Exhibit**
28 **1.**

1 information and belief, around the same time that Stoer, Anderson, and Ward were
2 proposing the NorCal Plan to Benson (in late 2017), Stoer had been awarded the general
3 contractor job on the Element project.

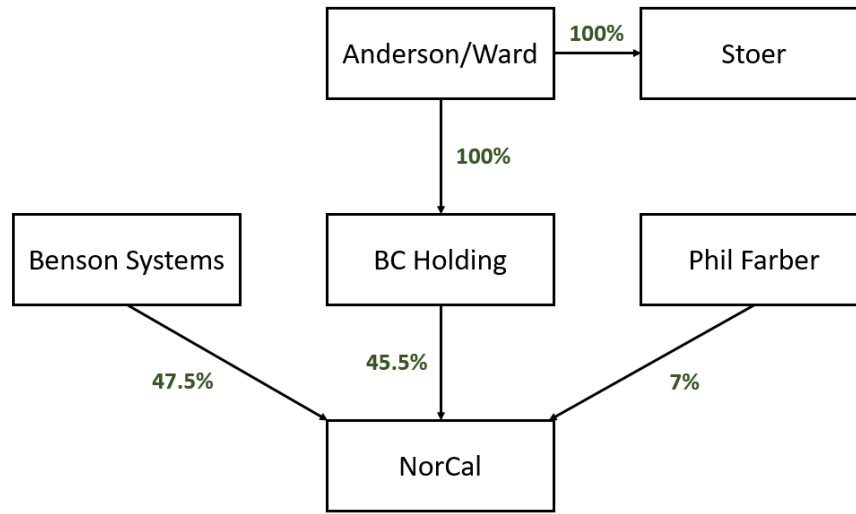
4 263. Around the same time, Anderson and Ward, on behalf of themselves, BC
5 Holding, and Stoer, approached Benson about using the entity that would become NorCal
6 to bid for the plumbing, HVAC, fire sprinkler, fire alarm, low-voltage data
7 communications, and electrical systems contracts on the Element project (and other
8 projects). Finding the potential of a project the size of the Element job attractive, Benson
9 agreed.

10 264. On or about June 22, 2018, Stoer executed the Prime Contract for Element
11 with the Owner.

12 265. A little over a week later, on or about July 1, 2018, Benson, BC Holding, and
13 Phil Farber (a Benson employee that would serve as project director, or the “boots on the
14 ground” for NorCal in the Element project) continued moving Stoer, Anderson, and Ward’s
15 scheme forward by executing the Operating Agreement for NorCal—the entity through
16 which Stoer was going to increase its profit on the Element project (and, potentially, other
17 projects in the future).

18 266. Under the terms of the NorCal Operating Agreement, NorCal’s profits on the
19 Element project would be split as follows: 47.5% to Benson, 45.5% to BC Holding, and
20 7% to Phil Farber. Ex. 1 at Sect. IV and Exhibit 1. The creation of NorCal put the last piece
21 in Stoer, Anderson, and Ward’s NorCal Plan in place.
22
23
24
25
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267. A visual of the ownership structure of NorCal is as follows:



268. BC Holding represented to Benson in the NorCal Operating Agreement that BC Holding would contribute to NorCal initial paid-in capital in the amount of \$200,000. Ex. 1 at Sect. III and Exhibit 2. BC Holding, Anderson, and Ward never performed this obligation to capitalize NorCal, and later made statements establishing they never intended to provide the \$200,000 to capitalize NorCal.

269. Relying on the representations of Stoer, BC Holding, Anderson, and Ward that they were committed to the NorCal Plan (which later they made clear was a lie), on or about July 18, 2018, Benson caused the Articles of Organization for NorCal to be filed with the Secretary of State for California.

270. Beginning in March 2018 and continuing through August 2018, Benson began working on estimates for the Element project while Stoer and Benson negotiated the terms of potential subcontracts. On or about August 13, 2018, Benson and Stoer executed a Letter of Intent for Subcontract Agreement regarding the Element project. Negotiations regarding the actual subcontracts continued into September 2018.

271. On or about September 21, 2018, Anderson first requested that Benson and/or NorCal obtain bonds concerning the subcontracted work on the Element project. Benson was shocked. Bonding had not previously been a requirement in the bidding

1 process, and neither Benson nor NorCal had agreed to obtain bonds for the subcontracted
2 work. Because NorCal was a newly created entity, obtaining bonding for it was highly
3 challenging. Regardless, Benson employees took steps to determine how NorCal might
4 obtain appropriate bonds for the subcontracted work at the NorCal level. Specifically, on
5 or about September 24, 2018, Eric Benson began inquiring with Benson's bonding
6 company whether bonds would be available for NorCal and how much that bonding might
7 cost. Later the same day, Eric Benson requested actual contracts from Anderson on the
8 Element project for use in the bonding process.

9
10 272. On or about September 24, 2018, Anderson and Ward caused Stoer to extend
11 a written offer to NorCal for the plumbing work at the Element project (the "**Original**
12 **Plumbing Subcontract**").² Pursuant to the Original Plumbing Subcontract, NorCal would
13 install plumbing at the Element project in consideration for Stoer's payment of \$2,500,000.
14 Stoer and NorCal executed the Original Plumbing Subcontract. The California contractor's
15 license number listed on the Original Plumbing Subcontract belonged to Benson.

16 273. On or about October 8, 2018, Anderson and Ward caused Stoer to extend a
17 written offer to NorCal for the HVAC system work at the Element project (the "**Original**
18 **HVAC Subcontract**").³ Pursuant to the Original HVAC Subcontract, NorCal would
19 install an HVAC system at the Element project in consideration for Stoer's payment of
20 \$2,100,000. Stoer and NorCal executed the Original HVAC Subcontract. The California
21 contractor's license number listed on the Original HVAC Subcontract belonged to Benson.

22 274. Also on or about October 8, 2018, Anderson and Ward caused Stoer to extend
23 a written offer to NorCal for the fire sprinkler and/or fire suppression system work at the
24

25 ² A true and correct copy of the Original Plumbing Subcontract is attached hereto as
26 **Exhibit 2**.

27 ³ A true and correct copy of the Original HVAC Subcontract is attached hereto as **Exhibit**
28 **3**.

1 Element project (the “**Original Fire Sprinkler Subcontract**”).⁴ Pursuant to the Original
 2 Fire Sprinkler Subcontract, NorCal would install a fire sprinkler or fire suppression system
 3 at the Element project in consideration for Stoer’s payment of \$300,000. Stoer and NorCal
 4 executed the Original Fire Sprinkler Subcontract. The California contractor’s license
 5 number listed on the Original Fire Sprinkler Subcontract belonged to Benson.

6 275. On or about October 9, 2018, Anderson and Ward caused Stoer to extend a
 7 written offer to NorCal for the fire alarm system work at the Element project (the “**Original**
 8 **Fire Alarm Subcontract**”).⁵ Pursuant to the Original Fire Alarm Subcontract, NorCal
 9 would install a fire alarm system at the Element project in consideration for Stoer’s
 10 payment of \$200,000. Stoer and NorCal executed the Original Fire Alarm Subcontract. The
 11 California contractor’s license number listed on the Original Fire Alarm Subcontract
 12 belonged to Benson.

13 276. Also on or about October 9, 2018, Anderson and Ward caused Stoer to extend
 14 a written offer to NorCal for the low-voltage data communication work at the Element
 15 project (the “**Original LV Subcontract**”).⁶ Pursuant to the Original LV Subcontract,
 16 NorCal would install a low voltage data communication system at the Element project in
 17 consideration for Stoer’s payment of \$200,000. Stoer and NorCal executed the Original
 18 LV Subcontract. The California contractor’s license number listed on the Original LV
 19 Subcontract belonged to Benson.

20 277. On or about October 17, 2018, Anderson and Ward caused Stoer to extend a
 21 written offer to NorCal for the electrical system work at the Element project (the “**Original**
 22 **Electrical Subcontract**,” collectively with the Original Plumbing Subcontract, Original
 23

24 _____
 25 ⁴ A true and correct copy of the Original Fire Sprinkler Subcontract is attached hereto as
Exhibit 4.

26 ⁵ A true and correct copy of the Original Fire Alarm Subcontract is attached hereto as
 27 **Exhibit 5.**

28 ⁶ A true and correct copy of the Original LV Subcontract is attached hereto as **Exhibit 6.**

1 HVAC Subcontract, Original Fire Sprinkler Subcontract, Original Fire Alarm Subcontract,
 2 and Original LV Subcontract, the “**Original Subcontracts**”).⁷ Pursuant to the Original
 3 Electrical Subcontract, NorCal would install an electrical system at the Element project in
 4 consideration for Stoer’s payment of \$2,950,000. Stoer and NorCal executed the Original
 5 Electrical Subcontract. The California contractor’s license number listed on the Original
 6 Electrical Subcontract belonged to Benson.

7 278. All the owners of NorCal—Benson, BC Holding, Anderson, and Ward—and
 8 Stoer were aware that the California contractor’s license number listed on each of the
 9 Original Subcontracts belonged to Benson, not NorCal.

10 279. All the owners of NorCal—Benson, BC Holding, Anderson, and Ward—and
 11 Stoer understood that whoever performed the subcontracted work for the Element project
 12 needed a valid California contractor’s license.

13 280. All the owners of NorCal—Benson, BC Holding, Anderson, and Ward—and
 14 Stoer understood that NorCal did not have a valid California contractor’s license.

15 281. As a result of NorCal’s lack of a valid California contractor’s license, the
 16 initial drafts of the Original Subcontracts included Benson itself as the subcontractor with
 17 Benson’s California contractor’s license number listed next to the signature lines. The
 18 California contractor’s license number listed on the Original Subcontracts, which belonged
 19 to Benson, was not changed when Benson’s name was changed to that of NorCal on the
 20 Original Subcontracts before execution. At all times, Stoer was aware that the California
 21 contractor’s license reflected on all of the Original Subcontracts belonged to Benson, not
 22 NorCal.

23 282. Despite impediments, Benson caused NorCal, on or about November 20,
 24 2018, to file its own application to obtain a California contractor’s license. All the owners
 25

26
 27
 28 ⁷ A true and correct copy of the Original Electrical Subcontract is attached hereto as **Exhibit 7**.

1 of NorCal—Benson, BC Holding, Anderson, and Ward—and Stoer were aware that
2 NorCal had begun this process and was working on it diligently.

3 283. Also, beginning in late September 2018, Benson and NorCal continued
4 working to obtain bonds for NorCal on the Element project at the request of Stoer,
5 Anderson, and Ward. Through early 2019 this process began to involve significant requests
6 for information from NorCal and, because NorCal was a brand-new entity, the owners and
7 members thereof.

8 284. Then, NorCal was notified of an issue that made it clear it was not going to
9 obtain a California contractor's license. On or about March 27, 2019, Benson and NorCal
10 were informed that in order for NorCal to receive a California contractor's license,
11 Benson's pre-existing license would have to be inactivated. Because Benson had other
12 active jobs in California, inactivating Benson's contractor's license was not possible. Stoer,
13 Anderson, and Ward agreed to Benson—not NorCal—directly fulfilling the subcontracts.

14 285. Accordingly, in or around March 2019, Benson, NorCal, Stoer, and the
15 principals of each began discussing replacing the Original Subcontracts with new
16 subcontracts by and between Stoer and Benson. All parties involved recognized that they
17 could not proceed under the Original Subcontracts because none of the parties could
18 present an unlicensed entity (*i.e.*, NorCal) to the permitting authorities. Accordingly, Stoer
19 agreed, and thereafter (as detailed herein) sent replacement contracts to Benson.
20

21 286. Because Stoer, Ward, and Anderson had already agreed and understood that
22 Benson was actually going to perform the work on the Element project (because Benson
23 had a valid California contractor's license), replacement contracts were merely intended to
24 clean up the documentation. In fact, by way of example, the very first invoice generated on
25 the Element project to Stoer was generated by Benson as reflected below:
26
27
28

*Invoice*

Invoice Number 1023	Date 9/27/2018
Customer Number 107	Due Date 10/27/2018

To: **Stoer Construction Inc**
1800 Hamilton Ave
Ste 230
San Jose, CA 95125

Remit To: **Benson Systems**
2065 W. Obispo Ave
Suite 101
Gilbert, AZ 85233

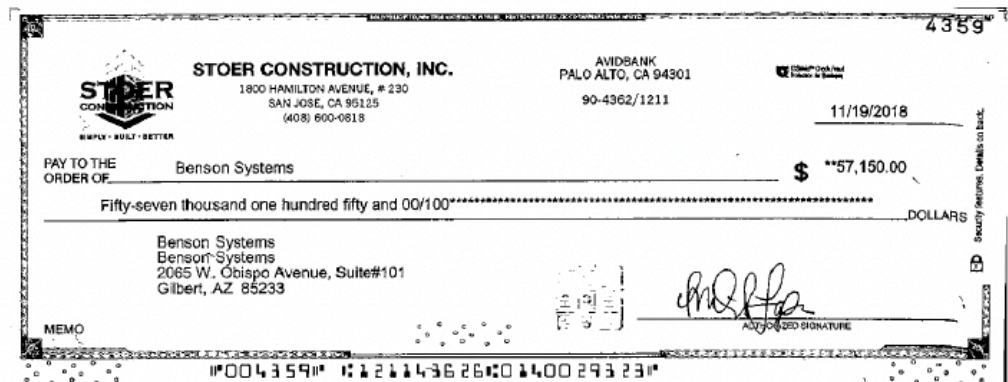
287. Correspondingly, the very first check written by Stoer on account of that invoice (and other invoices) was written to Benson as reflected below:

Organization Name: **BENSON SECURITY SYSTEMS INC DBA BENSON SYSTEMS**
Customer ID: 000009 Organization ID: 1911
Account: **NORTHERN CALIFORNIA - OPERATING** User: **REBECCA**

Current Date/Time: 11/26/2018 11:39 MST(MST)
Transfer Status: Sent
Transfer Date/Time: 11/26/2018 11:39 MST(MST)

Deposit #
796

Item#
16410



288. Accordingly, from the outset, Stoer, Anderson, and Ward knew and understood that Benson was actually performing the work on the Element project. This pattern—Benson invoices Stoer directly, Stoer pays Benson directly—would continue through the final payment received by Benson from Stoer in July 2020, as reflected in final check reflected below:

Organization Name: \$BENSON SECURITY SYSTEMS INC DBA BENSON SYSTEMS
 Customer ID: 000009 Organization ID: 1911
 Account: NORTHERN CALIFORNIA - OPERATING User: MICHELLE RAMIREZ, MICHELLE
 Current Date/Time: 07/24/2020 11:32 MST(MST)
 Transfer Status: Sent
 Transfer Date/Time: 07/24/2020 11:31 MST(MST)

Deposit #
1543

Item#
27662

STOER CONSTRUCTION, INC.
 1800 HAMILTON AVENUE, SUITE 230
 SAN JOSE, CA 95125
 (408) 600-0818

AVOID BANK
PAVO ALTO, GA 34001

6203

DATE
07/23/2020

AMOUNT
\$57,072.95

PAY: Benson Systems
FIFTY-SEVEN THOUSAND SEVENTY-TWO AND 95/100 DOLLARS

TO THE ORDER OF: Benson Systems
2065 W. Obispo Ave., Ste. 101
Gilbert, AZ 85233

SECURITY FEATURES INCLUDE FOLIO LOGOGRAM • HEAT SENSITIVE ICON • MICROPRINT • MULTI-COLOR BACKGROUND

006203 1211436260140029323

289. With a single exception, all checks written by Stoer on account of the subcontracts on the Element project were written directly to Benson, not NorCal.

290. Since Stoer handled all permits, submittals to the Owner, etc., these payments were consistent with reality. NorCal was incapable of performing any of the work or getting permits, so Benson had to step in. Further, from the perspective of permitting, it was clear to the city—and made clear by Stoer as the general contractor—that Benson was doing the work under its permit, as the city would have never issued permits otherwise.

291. For just one example of the general knowledge of all parties that Benson was performing the work on the Element project, below is a printout from the Milpitas Fire Department's system regarding the fire-alarm work that was conducted on the Element project, clearly showing that Benson was the contractor performing that work:

BLDG FIRE PERMITS (FILEM19)

File Edit View Insert Format Records Scripts Window Help

Records: 11 / 31,031 Found (Unsorted)

Show All New Record Delete Record

Layout: INSPECTORS WORKSH... View As: Preview Edit Layout

FIND **MILPITAS FIRE DEPARTMENT** **INSPECTORS' DAILY ACTIVITY TRACKING** **TO MAIN MENU**

Record Number:	2019-0410 NS3	Bldg Permit No.:	
Date:	04/12/19	Fire Permit No.:	
Contractor Name:	BENSON SYSTEMS	Project Name:	ELEMENT HOTEL - I
Contractor Address:	NONE	Proj. Address:	521 ALDER DR
Phone Number:	819-322-1043	Submittal:	
Contact person:	ROB AUSTAD		

If you are doing a final on any existing business that requires an annual fire permit, please update the MAF database with the business and permit information.
If you are doing a final on a project which involves a fire alarm or suppression system, please update the MAF database.

HM Inspection:		SEE CONDITIONS
LS Inspection:	YES	
Drawing y/n:		
Permit Fees Pd:		

Plan Check Type	Rev'd Date	Plan Checker	Status	Date
Required:	Due Date	LS: Ronald Estrada	Approved	6/26/2019
Life Safety	5/3/2019	Returned To:	Applicant	6/26/2019

Project Disposition: **Cancelled** Date: 6/11/2021 By: JG-A9

Drawings Check Box 2023-01

SCOPE OF WORK FIRE SPRINKLER FOR NEW HOTEL

Similarly, below is an excerpt from a response letter regarding fire-alarm permitting on the Element project, written by a Benson employee on Benson letterhead to the Milpitas Fire Department:

BENSON
SYSTEMS

Date: 17 May 2019

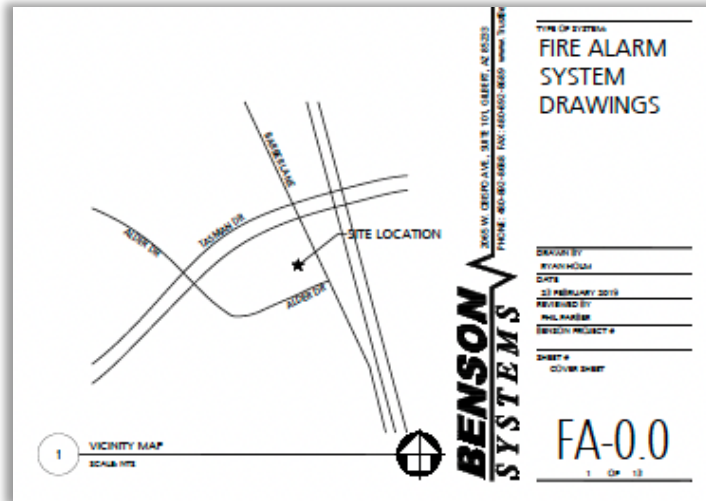
To: Ronald Estrada, PE, Fire Prevention Inspector
Milpitas Fire Department
455 East Calaveras Boulevard
Milpitas California, 95035
PH: 408-586-3365

From: Ryan Holm
Systems Designer
Benson Systems
2065 W. Obispo Ave., Suite 101
Gilbert, AZ 85233
PH: 480-896-8688 x 1148
ryan.holm@bensonsys.com

RE: Element Hotel
521 Alder Drive
Application # 2019-0408

Fire Alarm Permit Design Review
1st AHJ Plan Review Comment Response Letter

Included with that response letter were drawings of the fire-alarm system generated by Benson employees bearing the Benson logo, as reflected below:



These drawings also include specific information regarding the installing company (contractor, Benson) and the general contractor (Stoer), among others, as reflected below:

SCOPE OF WORK INSTALL VOICE EVACUATION SYSTEM BENSON SYSTEMS CONDUIT & BACK BOX ELECTRICAL CONTRACTOR WIRE BENSON SYSTEMS TRIM BENSON SYSTEMS HEAD END BENSON SYSTEMS WATER FLOW AND TAMPER SPRINKLER CONTRACTOR DUCT DETECTORS: HVAC CONTRACTOR	CODES & STANDARDS BUILDING CODE: 2016 CBC MECHANICAL CODE: 2016 CMC ELECTRICAL CODE: 2016 NEC FIRE CODE: 2016 CFC & 2016 NFPA 72 WITH LOCAL AMENDMENTS 2016 NFPA 14 SUNNYVALE MUNICIPAL CODE	INSTALLING COMPANY BENSON SYSTEMS 8910 ACTIVITY ROAD SAN DIEGO, CALIFORNIA 92126 PH: 619-270-8787 CALIFORNIA C16/C10 LICENSE #795362
FIRE ALARM PERFORMANCE <input checked="" type="checkbox"/> CENTRAL STATION MONITORING <input type="checkbox"/> REMOTE SIGNALING STATION <input type="checkbox"/> PROTECTED PREMISES <input type="checkbox"/> PUBLIC FIRE ALARM REPORTING	PROJECT INFORMATION OCCUPANCY = A-2, A-3, B, R-1 1ST FLOOR = 23,800 SQ. FT. 23 SLEEPING UNITS 2ND FLOOR = 23,800 SQ. FT. 43 SLEEPING UNITS 3RD FLOOR = 23,800 SQ. FT. 43 SLEEPING UNITS 4TH FLOOR = 23,800 SQ. FT. 43 SLEEPING UNITS 5TH FLOOR = 23,800 SQ. FT. 43 SLEEPING UNITS TOTAL = 119,000 SQ. FT. 195 SLEEPING UNITS CONSTRUCTION TYPE = IA = HOTEL	MONITORING COMPANY RAPID RESPONSE MONITORING 400 EAST RINCON STREET #300 CORONA, CALIFORNIA 92879 PH: 800-558-7767 UL#821965-000
TYPE OF SYSTEM <input checked="" type="checkbox"/> CONVENTIONAL <input checked="" type="checkbox"/> ADDRESSABLE <input checked="" type="checkbox"/> CLASS "A" <input checked="" type="checkbox"/> CLASS "B" <input checked="" type="checkbox"/> TEMPORAL 3 SOUNDERS <input checked="" type="checkbox"/> VOICE EVACUATION <input checked="" type="checkbox"/> DIALER <input checked="" type="checkbox"/> DISTRIBUTED ANTENNA SYSTEM (FBO) <input type="checkbox"/> PLENUM USED <input type="checkbox"/> FIRE/BURG PANEL COMBO	A.H.J. FOR THIS PROJECT CITY OF MILPITAS 455 EAST CALAVERAS BOULEVARD MILPITAS, CALIFORNIA 95120 PH: 408-586-3240	ARCHITECT THE RICHARDSON DESIGN PARTNERSHIP LLC. 510 SOUTH 600 EAST SALT LAKE CITY, UTAH 84102 PH: 801-355-6868
		ELECTRICAL ENGINEER SPECTRUM ENGINEERS 324 SOUTH STATE STREET SUITE 400 SALT LAKE CITY, UTAH 84111 PH: 801-328-5151
		GENERAL CONTRACTOR STOER CONSTRUCTION 1800 HAMILTON AVENUE SUITE 230 SAN JOSE, CALIFORNIA 95125 PH: 408-593-5273

292. As additional evidence that Stoer knew (and approved) of Benson performing the work on the Element project, Stoer itself attached this drawing to a submission to its own architect, The Richardson Design Partnership, in April 2019 as reflected in the letter below:

STOER CONSTRUCTION
1800 Hamilton Avenue, Ste. 230
San Jose, CA 95125
P. 408.600.0818 | F. 408.600.0818
License #1000445
www.stoercon.com

Letter of Transmittal

Date: 4.2.19

Project: Element, Milpitas
From: STOER CONSTRUCTION INC.

To: The Richardson design Partnership, L.L.C.
510 south 600 East, Salt Lake City, Utah
Zip - 84102

Attention: Marc Imlay
mimlay@trdp.com
801.822.3271

Sent Via: ☐ US Mail
☐ Courier Service
☒ Email

293. Furthermore, consistent with these permitting and relating documents evidencing that Stoer, the city of Milpitas, the Milpitas Fire Department, and others were aware that Benson was performing the work, the ultimate owner of the Element hotel, a Marriott-branded hotel, was also aware *and approved* of Benson's involvement in the project, as reflected in the excerpt of a letter below regarding fire-alarm work:

Marriott
Fire Protection & Life Safety
10400 Fernwood Road
Bethesda, MD 20817
(301) 380-7502
fire.protection@marriott.com

MEMORANDUM

TO: Rob Pratt

FROM: Joseph Felton
Dept. 52/924.36
443-813-1428

CC: Rob Schmidt and file

DATE: 9/2/2019

SUBJECT: Element
San Jose Milpitas, CA.

☐ REVISE and RESUBMIT*

☒ MAKE CORRECTIONS AS NOTED (Provide corrective actions(s) in writing to this office)

☐ NO EXCEPTION TAKEN

PROJECT #: 5107 LOG #: 16051 CHARGE TO #: 5292436

The attached () MEP's, () egress, () life safety, () site plans, (X) fire alarm plans, (X) fire alarm cut-sheets, () sprinkler plans, () sprinkler cut-sheets, () hydraulic calculations, () kitchen hood, () have been reviewed. FACP Kidde VS-4.

Submittals for the above referenced project, prepared by Benson Systems and with no revision dates noted were reviewed for compliance with Marriott's Module 14 and applicable codes.

294. In February 2019, Benson began the electrical and HVAC work on the Element project under its valid California contractor's license.

295. While work proceeded, on or about July 26, 2019, Stoer extended an offer to Benson to perform work on the Element project as evidenced by the six (6) new subcontracts between Stoer and Benson (individually, the "**New Plumbing Subcontract**," "**New HVAC Subcontract**," "**New Fire Sprinkler Subcontract**," "**New Fire Alarm Subcontract**," "**New LV Subcontract**," and "**New Electrical Subcontract**" and collectively, the "**New Subcontracts**")⁸ to replace the six (6) Original Subcontracts.⁹ The only difference between the Original Subcontracts and the New Subcontracts was the substitution of Benson for NorCal as the subcontractor. All other terms of the subcontracts remained the same, including, but not limited to, the scope of the work to be performed under each subcontract and the amount Stoer was obligated to pay for such work.

296. On or about July 30, 2019, Eric Benson accepted Stoer's offer and signed the New Subcontracts on behalf of Benson. Eric Benson returned executed copies of the New Subcontracts to Stoer. Stoer's delivery of the New Subcontracts to Benson and Benson's subsequent execution and return of the signed New Subcontracts constituted an offer (by Stoer) and acceptance (by Benson). Thereby creating a valid, binding, and enforceable contract.

297. Moreover, the parties moved forward and operated under the understanding that the New Subcontracts were in place and controlling. In fact, Benson routinely observed Stoer, Anderson, and Ward representing to third-parties that the New Subcontracts were the operative contracts. *See, e.g.*, ¶¶ 302-303 below. Accordingly one of two things must

⁸ True and correct copies of the New Plumbing Subcontract, New HVAC Subcontract, New Fire Sprinkler Subcontract, New Fire Alarm Subcontract, New LV Subcontract, and New Electrical Subcontract are attached hereto as **Exhibits 8-13**, respectively.

⁹ A true and correct copy of the parties' July 18-30, 2019 correspondence is attached hereto as **Exhibit 14**.

1 be true, either the New Subcontracts are the operative agreements between Benson and
2 Stoer *or* Stoer, Ward, and Anderson induced Benson into signing the New Subcontracts as
3 part of their scheme to defraud Benson and deprive Benson of the compensation it earned
4 for work performed on the Element project.

5 298. Following the execution of the New Subcontracts, Benson continued to
6 perform work on the Element project for a period of approximately fifteen (15) months,
7 through and including October 2020, continued to issue invoices for work performed, and
8 continued to get paid by Stoer. At all times relevant, Benson believed, based on Stoer,
9 Anderson, and Ward's actions, statements, and payments, that all construction work
10 performed by Benson was pursuant to the New Subcontracts issued to Benson by Stoer. In
11 other words, Benson relied on Stoer, Anderson, and Ward acting honestly and in good
12 faith. Anderson, Ward, BC Holding, and Stoer all knew (for the reasons noted above) that
13 Benson was itself performing under the New Subcontracts, and that it had to because
14 NorCal did not have a valid California contractor's license.

15 299. Throughout Benson's performance of the contracted-for work on the
16 Element project, Benson's employees, particularly Phil Farber, met and communicated
17 regularly with Stoer, Anderson, and Ward regarding the status of that project, the work
18 being performed by Benson, and the difficulties faced in that work. Benson employees,
19 particularly Shawn and Eric Benson, also communicated regularly with Stoer, Anderson,
20 and Ward regarding licensure and bonding issues, as well as unpaid billings for work
21 performed by Benson. For example, on or about October 16, 2019, Eric Benson provided
22 an email update to Phil Varni, Stoer's Director of Operations, regarding the bonding issue.

23 300. In September 2019, following execution of the New Subcontracts, Benson
24 began the low-voltage work on the Element project.

25 301. In December 2019, following execution of the New Subcontracts, Benson
26 began the fire-alarm work on the Element project.
27
28

1 302. Benson continued work on the Element project throughout October 2020,
2 issuing invoices totaling approximately \$7.2 million (after application of credits by Benson
3 to Stoer), of which Stoer paid approximately \$5.9 million. Benson used the funds received
4 from Stoer pursuant to the New Subcontracts to pay legitimate expenses associated with
5 the Element project, in addition to significant additional funds contributed by Benson for
6 that purpose. Specifically, though BC Holding never contributed any capital or other funds
7 to NorCal (or the Element project) despite its contractual obligations to do so, Benson,
8 relying on Stoer, Ward, and Anderson, kept the Element project going by contributing at
9 least \$2.5 million between late 2018 and late 2020 on account of labor, materials, and other
10 costs attributable to project delays, cost overruns, and additional overhead. Much of these
11 costs were caused by Stoer's mishandling of the Element project from the start.

12 303. Moreover, Anderson has sworn under oath that the subcontracts were
13 between Stoer and Benson. In connection with the bonding process, on or about January
14 16, 2020, Anderson, as President & CEO of Stoer, executed affidavits verifying under oath
15 that the Element subcontracts were with Benson (not NorCal) (*i.e.*, the New Subcontracts).
16 A portion of one of the affidavits executed by Anderson (concerning the fire-sprinkler
17 subcontract) is reflected below:
18

AFFIDAVIT OF OBLIGEE

Before me, the undersigned, Sean Anderson, personally appeared who, after being duly sworn, deposes and says:

1. That the undersigned is the President & CEO of Stoer Construction, Inc. (hereinafter referred to as the "Obligee") and as such I am personally familiar with that certain construction project known as LD Element Hotel - 521 Alder Drive and Barber Lane, Milpitas, CA 95035 (hereinafter referred to as the "Project").
2. That Obligee has entered into a contract with Benson Security Systems, Inc. (hereinafter referred to as the "Principal") dated October 9, 2018 in the amount of Three Hundred Thousand and 00/100 Dollars (\$ 300,00.00) and further described as: LD Element Hotel - Work Categories: Fire Sprinkler / Fire Suppression 521 Alder Drive and Barber Lane, Milpitas, CA 95035 Stoer Job #18-026 (hereinafter referred to as the "Contract").

304. The signature line, executed by Anderson, for that affidavit is reflected below:

9. That Obligee acknowledges its understanding that Travelers Casualty and Surety Company of America and its affiliates ("Travelers") will rely upon the representations set forth in this affidavit in determining whether to issue bonds for Principal in connection with the Contract. The Obligee further acknowledges its understanding that each representation is material to Travelers' decision to issue bonds for Principal in connection with the Contract.


(Obligee)

By: Sean Anderson
Its: President & CEO
(Name and Title of Authorized Corporate Officer)

This Affidavit is consistent with the truth (albeit a direct contradiction of the allegations set forth in the First Amended Complaint), because Anderson knew by 2020 (and well-before) that NorCal was a new entity, incapable of getting bonding, and incapable of getting a California contractor's license. This sworn testimony recognized what the parties knew all along, namely that Benson had done all the work under its California license.

1 *Stoer Admits the NorCal Plan Was a Fraud*

2 305. On or about July 24, 2020, Benson received the last payment made by Stoer
3 for work Benson performed at the Element project—a partial payment for prior invoices
4 generated in March 2020 on the fire alarm and plumbing subcontracts. The last payment
5 Benson received on the HVAC, electrical, low-voltage data, and electrical subcontracts
6 occurred in May 2020.

7 306. Once Stoer stopped making timely payments to Benson—payments were
8 required under the subcontracts and California law—Benson inquired with Stoer as to why.
9 In response to those inquires, Anderson and Ward, on behalf of themselves and Stoer,
10 consistently represented to Shawn Benson that there was nothing to worry about, the
11 applications for payment had been approved, and unpaid billings would be caught up once
12 Stoer received payment from the Owner. At the same time, Stoer demanded that Benson
13 continue working to keep the project on track. Committed to what it believed could still be
14 a successful conclusion to the Element project and relying on Stoer’s representations that
15 unpaid billings would be paid, Benson continued to perform work subsequent to the July
16 2020 partial payment. To date, however, Stoer has not compensated Benson for the work
17 Benson performed on the Element project. Indeed, Stoer still owes Benson approximately
18 \$1.3M for work and retention Benson performed and billed.
19

20 307. Work on the Element project was difficult. Covid had a profound impact on
21 the ability to obtain labor and the cost of the same (e.g., 3x normal labor costs and having
22 to pay overtime in many instances), but an even more profound impact resulted from
23 Stoer’s faulty project management. Stoer refused to take responsibility, instead demanding
24 that Benson “man-up” its labor. It later became clear that Stoer attempted to use this time
25 and labor crunch as an angle to get Benson off the Element project.

26 308. Case in point, early on in the Element project there was a problem with the
27 framing work (not performed by Benson, or NorCal for that matter) that substantially
28 delayed the construction. Particularly, there was a five-month standstill while Stoer tried

1 to acquire a framing permit. Once obtained, Stoer did not update or amend the construction
2 schedule (upon information and belief, because it stood to incur contractual penalties under
3 its Prime Contract with LD Milpitas).

4 309. Similarly, in response to a Stoer directive that Benson “man-up” on
5 electrical, Benson hired nineteen (19) extra electricians, approximately doubling its labor
6 on the job, and showed up to Element to perform only to have Stoer’s Chief Executive
7 Officer, Anderson, refuse access—telling Benson to send its labor to another job until
8 further notice. The next day, on or about July 27, 2020, Stoer purported to terminate the
9 low-voltage data communications, electric, and fire-alarm subcontracts. Such terminations
10 were wrongful and in breach of the parties’ contractual agreements.

11 310. On or about October 28, 2020, Shawn Benson and Phil Farber traveled to the
12 Element project jobsite to meet with Ward and Phil Varni, on behalf of Stoer, regarding
13 the unpaid billings owed to Benson for work performed and retention—\$1.3 million since
14 Stoer’s last payment in July 2020. At that meeting, Stoer’s Chief Operating Officer, Ward,
15 informed Shawn Benson (a) that Stoer had no intention of paying Benson’s unpaid billings,
16 (b) of Stoer’s intention to eliminate Benson from the Element project and replace Benson
17 with another subcontractor from whom Stoer could take more money for the subcontractor
18 work. At that meeting, Ward laughed in Shawn Benson’s face and told him that “we were
19 wondering when you were going to come out” and “how long you were going to work for
20 free.” Ward continued that Stoer had “no intention of ever paying you” and was “just trying
21 to get you to work.” In other words, Ward admitted that he, Anderson, BC Holding, and/or
22 Stoer breached their agreements with Benson and made material misrepresentations to
23 Benson to induce Benson into entering into the NorCal Operating Agreement, the Original
24 Subcontracts, and the New Subcontracts.

25 311. Within minutes of the conclusion of the meeting at the Element project, Phil
26 Varni, on behalf of Stoer, purported to terminate the HVAC, plumbing, and fire sprinkler
27 subcontracts via email. At the same time, Varni, on behalf of Stoer, demanded that Benson
28

1 vacate the job site within two (2) hours of receipt of the message. Such terminations were
2 wrongful and in breach of the parties' contractual agreements.

3 312. In response to the meeting at Stoer's headquarters on October 28, 2020 and
4 the revelation that Stoer had never intended to pay Benson for the unpaid billings despite
5 its representations to the contrary, Benson justifiably pulled its employees off the Element
6 project and ceased performing work.

7 313. Upon information and belief, Stoer subsequently replaced Benson with a
8 separate subcontractor or subcontractors with respect to the low-voltage data
9 communications, electric, fire-alarm, HVAC, plumbing, and fire sprinkler subcontracts.
10 Failing to pay Benson for work performed prior to the wrongful termination of the
11 subcontracts allowed Stoer to realize 100% of the value of the work performed by Benson.

12 314. On or about October 30, 2020, Stoer filed an arbitration action against
13 NorCal in California seeking disgorgement of amounts allegedly paid to NorCal that were
14 actually paid to Benson.

15 315. On or about February 11, 2021, BC Holdings sent a letter to Benson
16 purporting to withdraw from NorCal as a member.

17 316. On or about June 16, 2021, NorCal filed Chapter 7 bankruptcy.

18 317. On or about August 17, 2021, Stoer filed a state-court action against Benson
19 and individuals—the original filing of this action.

20 318. On or about November 8, 2021, Defendants removed the state-court action
21 to the Northern District of California.

22 319. On or about December 13, 2021, Stoer filed a proof of claim in the NorCal
23 bankruptcy for the same claims Stoer makes against Benson in this action.

24 320. On or about March 9, 2022, the Northern District of California transferred
25 this case to the District of Arizona.
26
27
28

FIRST CAUSE OF ACTION

(Breach of Contract (the New Subcontracts) – Benson against Stoer)

321. Benson repeats and re-alleges each and every paragraph above as if fully set forth herein.

322. The New Subcontracts are each valid, binding, and enforceable contracts that are supported by consideration on both sides.

323. Pursuant to the New Plumbing Subcontract, Benson agreed to install plumbing at the Element project pursuant to the scope of work referenced and fully incorporated in the New Plumbing Subcontract.

324. In consideration for Benson's work under the New Plumbing Subcontract, Stoer agreed to pay Benson \$2,500,000.

325. Benson fully performed all the terms and conditions required of it under the New Plumbing Subcontract, except any that have been excused.

326. Stoer breached the New Plumbing Subcontract by failing to pay Benson for the full amount of the work Benson performed pursuant to the New Plumbing Subcontract.

327. Stoer's breach of the New Plumbing Subcontract substantially caused Benson harm. Specifically, Benson suffered monetary damages in an amount to be determined at trial. Further, Benson suffered damage to its reputation due to Stoer's breach of the New Plumbing Subcontract.

328. Pursuant to the New HVAC Subcontract, Benson agreed to install the HVAC system at the Element project pursuant to the scope of work referenced and fully incorporated in the New Plumbing Subcontract.

329. In consideration for Benson's work under the New HVAC Subcontract, Stoer agreed to pay Benson \$2,100,000.

330. Benson fully performed all the terms and conditions required of it under the New HVAC Subcontract, except any that have been excused.

1 331. Stoer breached the New HVAC Subcontract by failing to pay Benson for the
2 full amount of the work Benson performed pursuant to the New HVAC Subcontract.

3 332. Stoer's breach of the New HVAC Subcontract substantially caused Benson
4 harm. Specifically, Benson suffered monetary damages in an amount to be determined at
5 trial. Further, Benson suffered damage to its reputation due to Stoer's breach of the New
6 HVAC Subcontract.

7 333. Pursuant to the New Fire Sprinkler Subcontract, Benson agreed to install the
8 fire sprinkler and/or fire suppression system at the Element project pursuant to the scope
9 of work referenced and fully incorporated in the New Fire Sprinkler Subcontract.

10 334. In consideration for Benson's work under the New Fire Sprinkler
11 Subcontract, Stoer agreed to pay Benson \$300,000.

12 335. Benson fully performed all the terms and conditions required of it under the
13 New Fire Sprinkler Subcontract, except any that have been excused.

14 336. Stoer breached the New Fire Sprinkler Subcontract by failing to pay Benson
15 for the full amount of the work Benson performed pursuant to the New Fire Sprinkler
16 Subcontract.

17 337. Stoer's breach of the New Fire Sprinkler Subcontract substantially caused
18 Benson harm. Specifically, Benson suffered monetary damages in an amount to be
19 determined at trial. Further, Benson suffered damage to its reputation due to Stoer's breach
20 of the New Fire Sprinkler Subcontract.

21 338. Pursuant to the New Fire Alarm Subcontract, Benson agreed to install a fire
22 alarm system at the Element project pursuant to the scope of work referenced and fully
23 incorporated in the New Fire Alarm Subcontract.

24 339. In consideration for Benson's work under the New Fire Alarm Subcontract,
25 Stoer agreed to pay Benson \$200,000.

26 340. Benson fully performed all the terms and conditions required of it under the
27 New Fire Alarm Subcontract, except any that have been excused.
28

1 341. Stoer breached the New Fire Alarm Subcontract by failing to pay Benson for
2 the full amount of the work Benson performed pursuant to the New Fire Alarm
3 Subcontract.

4 342. Stoer's breach of the New Fire Alarm Subcontract substantially caused
5 Benson harm. Specifically, Benson suffered monetary damages in an amount to be
6 determined at trial. Further, Benson suffered damage to its reputation due to Stoer's breach
7 of the New Fire Alarm Subcontract.

8 343. Pursuant to the New LV Subcontract, Benson agreed to install a low voltage
9 data communication system at the Element project pursuant to the scope of work referenced
10 and fully incorporated in the New LV Subcontract.

11 344. In consideration for Benson's work under the New LV Subcontract, Stoer
12 agreed to pay Benson \$200,000.

13 345. Benson fully performed all the terms and conditions required of it under the
14 New LV Subcontract, except any that have been excused.

15 346. Stoer breached the New LV Subcontract by failing to pay Benson for the full
16 amount of the work Benson performed pursuant to the New LV Subcontract.

17 347. Stoer's breach of the New LV Subcontract substantially caused Benson
18 harm. Specifically, Benson suffered monetary damages in an amount to be determined at
19 trial. Further, Benson suffered damage to its reputation due to Stoer's breach of the New
20 LV Subcontract.

21 348. Pursuant to the New Electrical Subcontract, Benson agreed to install an
22 electrical system at the Element project pursuant to the scope of work referenced and fully
23 incorporated in the New Electrical Subcontract.

24 349. In consideration for Benson's work under the New Electrical Subcontract,
25 Stoer agreed to pay Benson \$2,950,000.

26 350. Benson fully performed all the terms and conditions required of it under the
27 New Electrical Subcontract, except any that have been excused.
28

1 b. \$2,100,000 to install the HVAC system at the Element project
2 pursuant to the scope of work referenced and fully incorporated in the New
3 Plumbing Subcontract;

4 c. \$300,000 to install the fire sprinkler and/or fire suppression system at
5 the Element project pursuant to the scope of work referenced and fully
6 incorporated in the New Fire Sprinkler Subcontract;

7 d. \$200,000 to install a fire alarm system at the Element project pursuant
8 to the scope of work referenced and fully incorporated in the New Fire Alarm
9 Subcontract;

10 e. \$200,000 to install a low voltage data communication system at the
11 Element project pursuant to the scope of work referenced and fully
12 incorporated in the New LV Subcontract; and

13 f. \$2,950,000 to install an electrical system at the Element project
14 pursuant to the scope of work referenced and fully incorporated in the New
15 Electrical Subcontract.

16
17 357. Benson justifiably relied on Stoer's promises to pay Benson for the work
18 Benson performed on the Element project.

19 358. Benson's reliance on Stoer's promises to pay Benson for the work Benson
20 performed on the Element project was both reasonable and foreseeable based on the
21 parties' agreement and course of conduct.

22 359. Relying on Stoer's promises to pay Benson for the work it performed on the
23 Element project, Benson provided work on the Element project, including work relating to
24 the installation of (a) plumbing, (b) an HVAC system; (c) a fire sprinkler/fire suppression
25 system; (d) a fire alarm system; (e) a low voltage data communication system; and (f) an
26 electrical system.

27 360. Stoer failed to pay Benson for work Benson performed on the Element
28 project as promised.

FIFTH CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing (the New Subcontracts) – Benson against Stoer)

376. Benson repeats and re-alleges each and every paragraph above as if fully set forth herein.

377. The New Subcontracts are each valid, binding, and enforceable contracts that are supported by consideration on both sides.

378. Pursuant to the New Plumbing Subcontract, Benson agreed to install plumbing at the Element project pursuant to the scope of work referenced and fully incorporated in the New Plumbing Subcontract.

379. In consideration for Benson's work under the New Plumbing Subcontract, Stoer agreed to pay Benson \$2,500,000.

380. Benson fully performed all the terms and conditions required of it under the New Plumbing Subcontract, except any that have been excused.

381. Stoer breached the New Plumbing Subcontract by failing to pay Benson for the full amount of the work Benson performed pursuant to the New Plumbing Subcontract.

382. Stoer unfairly interfered with Benson's right to receive the benefits of the New Plumbing Subcontract.

383. Stoer's breach of the New Plumbing Subcontract substantially caused Benson harm. Specifically, Benson suffered monetary damages in an amount to be determined at trial. Further, Benson suffered damage to its reputation due to Stoer's breach of the New Plumbing Subcontract.

384. Pursuant to the New HVAC Subcontract, Benson agreed to install the HVAC system at the Element project pursuant to the scope of work referenced and fully incorporated in the New Plumbing Subcontract.

385. In consideration for Benson's work under the New HVAC Subcontract, Stoer agreed to pay Benson \$2,100,000.

1 386. Benson fully performed all the terms and conditions required of it under the
2 New HVAC Subcontract, except any that have been excused.

3 387. Stoer breached the New HVAC Subcontract by failing to pay Benson for the
4 full amount of the work Benson performed pursuant to the New HVAC Subcontract.

5 388. Stoer unfairly interfered with Benson's right to receive the benefits of the
6 New HVAC Subcontract.

7 389. Stoer's breach of the New HVAC Subcontract substantially caused Benson
8 harm. Specifically, Benson suffered monetary damages in an amount to be determined at
9 trial. Further, Benson suffered damage to its reputation due to Stoer's breach of the New
10 HVAC Subcontract.

11 390. Pursuant to the New Fire Sprinkler Subcontract, Benson agreed to install the
12 fire sprinkler and/or fire suppression system at the Element project pursuant to the scope
13 of work referenced and fully incorporated in the New Fire Sprinkler Subcontract.

14 391. In consideration for Benson's work under the New Fire Sprinkler
15 Subcontract, Stoer agreed to pay Benson \$300,000.

16 392. Benson fully performed all the terms and conditions required of it under the
17 New Fire Sprinkler Subcontract, except any that have been excused.

18 393. Stoer breached the New Fire Sprinkler Subcontract by failing to pay Benson
19 for the full amount of the work Benson performed pursuant to the New Fire Sprinkler
20 Subcontract.

21 394. Stoer unfairly interfered with Benson's right to receive the benefits of the
22 New Fire Sprinkler Subcontract.

23 395. Stoer's breach of the New Fire Sprinkler Subcontract substantially caused
24 Benson harm. Specifically, Benson suffered monetary damages in an amount to be
25 determined at trial. Further, Benson suffered damage to its reputation due to Stoer's breach
26 of the New Fire Sprinkler Subcontract.
27
28

1 396. Pursuant to the New Fire Alarm Subcontract, Benson agreed to install a fire
2 alarm system at the Element project pursuant to the scope of work referenced and fully
3 incorporated in the New Fire Alarm Subcontract.

4 397. In consideration for Benson's work under the New Fire Alarm Subcontract,
5 Stoer agreed to pay Benson \$200,000.

6 398. Benson fully performed all the terms and conditions required of it under the
7 New Fire Alarm Subcontract, except any that have been excused.

8 399. Stoer breached the New Fire Alarm Subcontract by failing to pay Benson for
9 the full amount of the work Benson performed pursuant to the New Fire Alarm
10 Subcontract.

11 400. Stoer unfairly interfered with Benson's right to receive the benefits of the
12 New Fire Alarm Subcontract.

13 401. Stoer's breach of the New Fire Alarm Subcontract substantially caused
14 Benson harm. Specifically, Benson suffered monetary damages in an amount to be
15 determined at trial. Further, Benson suffered damage to its reputation due to Stoer's breach
16 of the New Fire Alarm Subcontract.

17 402. Pursuant to the New LV Subcontract, Benson agreed to install a low voltage
18 data communication system at the Element project pursuant to the scope of work referenced
19 and fully incorporated in the New LV Subcontract.

20 403. In consideration for Benson's work under the New LV Subcontract, Stoer
21 agreed to pay Benson \$200,000.

22 404. Benson fully performed all the terms and conditions required of it under the
23 New LV Subcontract, except any that have been excused.

24 405. Stoer breached the New LV Subcontract by failing to pay Benson for the full
25 amount of the work Benson performed pursuant to the New LV Subcontract.

26 406. Stoer unfairly interfered with Benson's right to receive the benefits of the
27 New LV Subcontract.
28

1 407. Stoer's breach of the New LV Subcontract substantially caused Benson
2 harm. Specifically, Benson suffered monetary damages in an amount to be determined at
3 trial. Further, Benson suffered damage to its reputation due to Stoer's breach of the New
4 LV Subcontract.

5 408. Pursuant to the New Electrical Subcontract, Benson agreed to install an
6 electrical system at the Element project pursuant to the scope of work referenced and fully
7 incorporated in the New Electrical Subcontract.

8 409. In consideration for Benson's work under the New Electrical Subcontract,
9 Stoer agreed to pay Benson \$2,950,000.

10 410. Benson fully performed all the terms and conditions required of it under the
11 New Electrical Subcontract, except any that have been excused.

12 411. Stoer breached the New Electrical Subcontract by failing to pay Benson for
13 the full amount of the work Benson performed pursuant to the New Electrical Subcontract.

14 412. Stoer unfairly interfered with Benson's right to receive the benefits of the
15 New Electrical Subcontract.

16 413. Stoer's breach of the New Electrical Subcontract substantially caused
17 Benson harm. Specifically, Benson suffered monetary damages in an amount to be
18 determined at trial. Further, Benson suffered damage to its reputation due to Stoer's breach
19 of the New Electrical Subcontract.

20 414. In sum, Benson fully performed its obligations under each of the New
21 Subcontracts, and all conditions precedent to each New Subcontract have been satisfied.
22 Stoer, however, breached each of the New Subcontracts by failing to pay Benson for work
23 performed on the Element project and by wrongfully terminating the New Subcontracts.
24 As a result of Stoer's breaches and wrongful terminations of the New Subcontracts, Benson
25 has suffered substantial damages. Specifically, Benson has suffered monetary damages and
26 reputational damages due to Stoer's breaches of the New Subcontracts in an amount to be
27 determined at trial.
28

SIXTH CAUSE OF ACTION

(Declaratory Judgment – Benson against Stoer)

415. Benson repeats and re-alleges each and every paragraph above as if fully set forth herein.

416. Stoer entered into the Original Subcontracts with NorCal and thereafter entered into the New Subcontracts with Benson covering the exact same work, thereby abandoning and replacing the Original Subcontracts.

417. During the course of the Element project, all of the work under the New Subcontracts was performed by Benson. Benson issued the invoices for the work and Stoer made payments to Benson for the work.

418. Anderson, as President & CEO of Stoer, has verified under oath that the Element subcontracts were with Benson—not NorCal.

419. Stoer now claims that the work performed on the Element project by Benson was pursuant to the Original Subcontracts.

420. An actual controversy exists concerning the legal rights and duties of Benson.

421. Pursuant to 28 U.S. Code § 2201 and California Civil Code Section 1060, Benson seeks a declaration from this Court that the work performed by Benson on the Element project was pursuant to the New Subcontracts.

422. Declaratory judgment is necessary to determine what contract controlled the relationship between Benson and Stoer during the Element project.

423. There is no adequate alternative remedy available to the parties in this instance, making a declaratory judgment both necessary and proper.

SEVENTH CAUSE OF ACTION

(Breach of Contract (the NorCal Operating Agreement) - Benson against BC Holding, Stoer, Anderson, and Ward)

424. Benson repeats and re-alleges each and every paragraph above as if fully set forth herein.

425. The NorCal Operating Agreement is a valid, binding, and enforceable contract that is supported by consideration on both sides.

426. Benson fully performed its obligations under the NorCal Operating Agreement, except any that were excused, and all conditions precedent to the NorCal Operating Agreement have been satisfied.

427. Pursuant to the NorCal Operating Agreement, BC Holding, through Ward and Anderson and on behalf of Stoer, agreed to capitalize NorCal and fund its operations.

428. BC Holding, acting at the direction of Ward and Anderson and on behalf of Stoer, breached the NorCal Operating Agreement by failing to properly capitalize NorCal and fund its operations.

429. Benson has been damaged as a result of BC Holding's breach. Specifically, Benson was required to fund the operations of NorCal by itself, causing Benson to suffer monetary damages in an amount to be proven at trial.

430. Benson is entitled to rescission, restitution, and compensatory damages in an amount to be determined at trial to make it whole.

431. At all relevant times, BC Holding was the alter ego of Stoer, Anderson, and Ward. As such, Stoer, Anderson, and/or Ward are liable for BC Holding's conduct.

EIGHTH CAUSE OF ACTION

(Promissory Estoppel – Benson against BC Holding, Stoer, Anderson, and Ward)

432. Benson repeats and re-alleges each and every paragraph above as if fully set forth herein.

1 433. Benson asserts this cause of action as an alternative to its Seventh Cause of
2 Action for Breach of the NorCal Operating Agreement.

3 434. BC Holding, acting at the direction of Ward and Anderson and on behalf of
4 Stoer, promised to create NorCal as a joint venture with Benson, capitalize NorCal, and
5 fund its operations.

6 435. Benson justifiably relied on BC Holding's promises to create NorCal as a
7 joint venture, capitalize NorCal, and fund its operations.

8 436. Benson's reliance on BC Holding's promises to create the NorCal joint
9 venture, capitalize NorCal, and fund its operations was both reasonable and foreseeable
10 based on the parties' agreement and course of conduct.

11 437. Relying on BC Holding's promises, Benson undertook work on the Element
12 project and provided the funds necessary to capitalize and operate NorCal when BC
13 Holding failed to do so.

14 438. BC Holding, acting at the direction of Ward and Anderson and on behalf of
15 Stoer, failed to pursue the joint venture and also failed to capitalize NorCal or provide the
16 funds necessary to operate the company.

17 439. Benson was injured by its reliance upon BC Holding's promises to create and
18 pursue the joint venture, capitalize NorCal, and fund its operations. Specifically, Benson
19 was required to capitalize NorCal and fund its operations. The full amount of monetary
20 damages Benson has suffered will be determined at trial.

21 440. At all relevant times, BC Holding was the alter ego of Stoer, Anderson, and
22 Ward. As such, Stoer, Anderson, and/or Ward are liable for BC Holding's conduct.

23 441. In sum, BC Holding, acting at the direction of Ward and Anderson and on
24 behalf of Stoer, promised to capitalize NorCal and fund its operations. Benson justifiably
25 relied on BC Holding's promises to capitalize NorCal and fund its operations. Benson's
26 reliance was reasonable and foreseeable. Relying on BC Holding's promises to capitalize
27 NorCal and fund its operations, Benson undertook work on the Element project and
28

provided the funds necessary to capitalize and operate NorCal when BC Holding failed to do so. BC Holding, however, failed to pursue projects as part of the joint venture, capitalize NorCal or fund its operations. As a result of BC Holding's failure to capitalize NorCal and fund its operations, Benson has suffered substantial damages. Specifically, Benson has suffered monetary damages in an amount to be determined at trial.

NINTH CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing (the NorCal Operating Agreement) – Benson against BC Holding, Stoer, Anderson, and Ward)

442. Benson repeats and re-alleges each and every paragraph above as if fully set forth herein.

443. The NorCal Operating Agreement is a valid, binding, and enforceable contract that is supported by consideration on both sides.

444. Benson fully performed its obligations under the NorCal Operating Agreement, except any that were excused, and all conditions precedent to the NorCal Operating Agreement have been satisfied.

445. Pursuant to the NorCal Operating Agreement, BC Holding, through Ward and Anderson and on behalf of Stoer, agreed to capitalize NorCal and fund its operations.

446. BC Holding, acting at the direction of Ward and Anderson and on behalf of Stoer, breached the NorCal Operating Agreement by failing to properly capitalize NorCal and fund its operations.

447. BC Holding unfairly interfered with Benson's right to receive the benefits of the NorCal Operating Agreement.

448. Benson has been damaged as a result of BC Holding's breach. Specifically, Benson was required to fund the operations of NorCal by itself, causing Benson to suffer monetary damages in an amount to be proven at trial.

449. Benson is entitled to rescission, restitution, and compensatory damages in an amount to be determined at trial to make it whole.

(Breach of Fiduciary Duty - Benson against BC Holding, Stoer, Anderson, and Ward)

452. As a member of NorCal pursuant to the NorCal Operating Agreement, BC Holding owed fiduciary duties to Benson, including a duty of loyalty, a duty of good faith, and a duty of care.

454. As a direct and proximate result of BC Holding's actions, Benson has suffered damages in an amount to be proven at trial. These damages include monetary damages and reputational damages.

456. At all relevant times, BC Holding was the alter ego of Stoer, Anderson, and Ward. As such, Stoer, Anderson, and Ward are liable for BC Holding's conduct.

(Fraud – Defendants against Anderson, Ward, BC Holding, and Stoer)

458. Stoer, BC Holding, Anderson, and Ward made numerous misrepresentations to Defendants throughout the course of the Element project.

1 459. Stoer, BC Holding, Anderson, and Ward represented to Defendants that the
2 NorCal Plan was an opportunity to split profits on multiple different potential jobs, all the
3 while knowing that this was not the case. Rather, the goal of Stoer, BC Holding, Anderson,
4 and Ward was to use the Benson name and experience to funnel work to Stoer, induce
5 Benson to commit to the Element project, and bond it where they otherwise could not.
6 Stoer, BC Holding, Anderson, and Ward later admitted that they never had any intention
7 of entering into a business relationship with Benson, pursuing other job opportunities with
8 Benson, or compensating Benson for the work Benson performed on the Element project.

9 460. As part of the NorCal Plan, BC Holding, Anderson, and Ward represented to
10 Defendants that BC Holding, acting at the direction of Ward and Anderson and on behalf
11 of Stoer, would contribute the funds necessary to capitalize and operate NorCal.

12 461. Also in furtherance of the NorCal Plan, Stoer, Anderson, and Ward
13 represented to Defendants that (a) Stoer would compensate Benson for the work Benson
14 performed at the Element project; and (b) the New Subcontracts were the operative
15 agreements between the parties.

16 462. Stoer, BC Holding, Anderson, and Ward knew that Defendants (a) were
17 relying on BC Holding to provide the funds needed to capitalize and operate NorCal;
18 (b) understood the New Subcontracts to be the operative agreements between Benson and
19 Stoer; (c) performed work on the Element project pursuant to the New Subcontract; and
20 (d) expected to be paid for the work Benson performed on the Element project.

21 463. Unbeknownst to Defendants, however, BC Holding, Anderson, and Ward
22 never intended to have BC Holding fund NorCal or pursue projects with Defendants.

23 464. Defendants were also unaware that Stoer, Anderson, and Ward never
24 intended to pay Benson for the work Benson performed on the Element project or that
25 Stoer, Anderson, and Ward would subsequently claim that the work was performed by
26 NorCal in an effort to deprive Benson of the compensation it is owed.
27
28

1 465. On information and belief, Stoer, BC Holding, Ward, and Anderson's plan
2 all along was to devise a scheme by which they would (a) claim Benson is not entitled to
3 payment for the work it performed on the Element project because the work was allegedly
4 performed by NorCal, an unlicensed California contractor; and (b) trade on Benson's good
5 name to usurp projects for Stoer's benefit.

6 466. BC Holding, Anderson, and Ward's representations that BC Holding would
7 contribute the funds necessary to capitalize and operate NorCal were false. Rather, BC
8 Holding, Anderson, and Ward intended to take advantage of Defendants.

9 467. Stoer, Anderson, Ward's representations that the New Subcontracts were the
10 operative agreements between the parties and that they would pay Benson for the work it
11 performed on the Element project were false.

12 468. Stoer, BC Holding, Anderson, and Ward made these representations with
13 knowledge of their falsity.

14 469. Stoer, BC Holding, Anderson, and Ward made these representations with an
15 intent to deceive Defendants.

16 470. Defendants relied on Stoer, BC Holding, Anderson, and Ward's
17 representations, contributing significant funds to capitalize and operate NorCal and
18 performing millions of dollars of work on the Element project.

19 471. Stoer, BC Holding, Anderson, and Ward's representations to Defendants
20 were intended to take advantage of Defendants—obtaining work for free, getting bonds for
21 a project that they could not otherwise obtain, and, now, trying to recover even those
22 amounts they actually paid to a licensed contractor (Benson).

23 472. As a direct and proximate result of Stoer, BC Holdings, Anderson, and
24 Ward's representations and actions, Defendants have suffered damages in an amount to be
25 proven at trial. These damages include monetary damages and reputational damages.

26 473. At all relevant times, BC Holding, Ward, and Anderson were the alter egos
27 of Stoer.
28

TWELFTH CAUSE OF ACTION

**(Conspiracy to Induce Breach of the New Subcontracts and Commit Fraud –
Defendants against Stoer, BC Holding, Anderson, and Ward)**

474. Defendants repeat and re-allege each and every paragraph above as if fully set forth herein.

475. On information and belief, Stoer, BC Holding, Anderson, and Ward conspired to commit defraud Defendants and deprive Benson of the benefits owed it for the work it performed on the Element project.

476. On information and belief, Stoer, BC Holding, Anderson, and Ward intentionally agreed to join in the scheme to defraud Defendants and deprive Benson of the benefits owed under the New Subcontracts.

477. In furtherance of this conspiracy, Stoer, BC Holding, Anderson, and/or Ward

a. represented to Benson that Stoer would pay Benson for the work Benson performed on the Element project even though Stoer never intended to pay Benson the full value of the work Benson performed on the Element project; and

b. created BC Holding to induce Benson to enter into the NorCal Operating Agreement and eventually caused Benson to capitalize NorCal and fund its operations.

478. Stoer, BC Holding, Anderson, and Ward actually did defraud Defendants.

479. As a legal and proximate result of the wrongful acts performed by Stoer, BC Holding, Anderson, and Ward, pursuant to the conspiracy, Defendants have suffered damages in an amount which will be proven at trial.

480. In committing the acts alleged herein pursuant to the conspiracy, Stoer, BC Holding, Anderson, and Ward acted willfully and with intent to cause injury to Defendants. As a result, Defendants are entitled to an award of punitive and exemplary damages in an amount to be determined at trial.

1 481. At all relevant times, BC Holding, Anderson, and Ward were the alter egos
2 of Stoer and BC Holding.

3 **IV. ATTORNEYS' FEES AND EXPENSES**

4 482. Benson repeats and re-alleges each and every paragraph above as if fully set
5 forth herein.

6 483. Pursuant to California Civil Procedure Code § 1021 and California Civil
7 Code § 1717, Benson is entitled to its reasonable attorney's fees and costs from BC Holding
8 based on the NorCal Operating Agreement and from Stoer based on the New Subcontracts,
9 or, alternatively the Original Subcontracts.

10 **V. PRAYER FOR RELIEF**

11 WHEREFORE, Defendants prays for relief as follows:

- 12 1. That Plaintiff takes nothing by the First Amended Complaint;
- 13 2. For judgment in favor of Defendants and against Plaintiff dismissing
14 Plaintiff's claims in their entirety, with prejudice;
- 15 3. For judgment in favor of Benson on all claims for relief;
- 16 4. For compensatory damages, lost profits, restitution, and/or rescission on all
17 claims by Benson for which such damages are authorized;
- 18 5. For punitive and exemplary damages on all claims by Benson for which such
19 damages are authorized;
- 20 6. For a declaration that that the work performed by Benson on the Element
21 project was pursuant to the New Subcontracts.
- 22 7. For Defendants' and Benson's attorney's fees incurred herein;
- 23 8. For Defendants' costs of suit incurred herein;
- 24 9. For pre-judgment and post-judgment interest at the maximum rate allowable
25 under law; and
- 26 10. For such other and further relief as the Court may deem just and proper.
- 27
- 28

1 DATED this 13th day of April, 2023.

2
3 FOLEY & LARDNER LLP

4 By: /s/ Mark C. Moore
5 Mark C. Moore (admitted *pro hac vice*)

6 Holland N. O'Neil (admitted *pro hac vice*)
7 Todd A. Murray (admitted *pro hac vice*)
8 Andrew A. Howell (admitted *pro hac vice*)
9 FOLEY & LARDNER LLP

10 and

11 Robert M. Charles, Jr.
12 LEWIS ROCA ROTHGERBER CHRISTIE LLP

13 *Attorneys for Defendants*
14 *BENSON SECURITY SYSTEMS, INC.;*
15 *SHAWN BENSON; ERIC BENSON; AND*
16 *CORY BENSON*

CERTIFICATE OF SERVICE

I certify that on this 13th day of April, 2023, I electronically transmitted the attached document to the Clerk's office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following registrants:

Further, on the same date I served the attached document to counsel by United States Mail, postage prepaid, addressed as follows:

Dennis Scott Zell
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/s/ Janelle C. Harrison
Janelle C. Harrison, Paralegal
Foley & Lardner LLP